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WHETHER AN ATTEMPT TO BRIBE AN OFFICER WHO IS WITHOUT AUTHORITY TO ACT IS A CRIMINAL OFFENSE.

The rule of the public prosecutor is a hard one whenever he attempts to enforce the laws for political offenses especially against men high in authority. Bribery is an offense of this kind and no public prosecutor has achieved a wider reputation as a bribery prosecutor than Hon. Joseph W. Folk of St. Louis; and yet nothing shows more clearly the difficulty which confronts the state's attorney in securing a conviction in a case of this kind than the recent and celebrated case of State v. Edward Butler, 77 S. W. Rep. 560.

The indictment in this case charged the defendant, the notorious politician, Edward Butler, with attempting to bribe Dr. Henry N. Chapman, a member of the board of health of St. Louis, by offering him $2,500 if he would vote, as a member of said board, to accept the bid of the St. Louis Sanitary Company for the reduction of the garbage of the city. A peculiar defense was interposed. The defendant claimed that even if he did offer the bribe charged, and even though he did get the contract and commenced work under it, that the board of health did not have authority under the charter to let the contract, and, therefore, defendant could not be guilty on the theory that an attempt to bribe an officer who is without authority to act, is not a criminal offense. This defense opened up two lines of inquiry for the court's investigation and decision—first, the construction of the city charter to determine the fact, whether the board of health did in fact have the power to make the contract involved; second, whether the defendant was liable in case it was found that the board of health had no such power.

We will not at this time discuss the first of these inquiries referred to. Suffice it to state that the court reached the conclusion that, under a provision in the charter, giving the city assembly power to pass ordinances to prevent the introduction of contagious diseases, and to secure the general health of the inhabitants *by any measure* necessary, the city assembly had not the power to give the board of health authority to place the contract for the sanitary disposal of the city's garbage, in view of section 27 of the same charter granting power to the board of public improvements only to let contracts for public work.

On the question whether an officer acting under an unconstitutional grant of power can be bribed, the court has this to say: "One of the essential elements of the offense of bribery is that the attempt to bribe must be in respect to a matter which 'may by law be brought before him in his official capacity.' In other words, to state the proposition sharply, there must be a law in force, at the time of the attempted bribery, which imposes upon him the duty of acting in his official capacity, upon a subject-matter which may be brought before him. It is not essential, under the statute defining the offense charged, that he should act upon the matter or that the matter should ever come before him, but it is vitally important, to constitute this offense, that there should be a law in force, at the time the bribe is offered, which would cast the burden upon him of acting, should the matter come before him. Unless this duty is imposed upon him by law, there can be no bribery. It will not do to say that there may be in the future a law enacted which would require the performance of this duty. When will this law be enacted—in a month, a year, or in the next century? The offense must be complete at the time of the commission of the act. The very purpose of the statute is to prevent public officials from being influenced in respect to questions upon which they are authorized to act. How can an officer be influenced to act when there is no law requiring him to do so, and no power under the law authorizing him to act? It may be said that it was thought the power existed, and there should be a conviction of bribery or attempted bribery. So it may be said that a witness who swears falsely, as to an immaterial matter, before the court or the grand jury, ought to be convicted of perjury, because he thought it was material; but what court would for a moment hold that a defendant could be convicted for swearing falsely as to matters immaterial to the legitimate subject of inquiry! Why not? Because the law is so written. That is a sufficient answer. The words in the statute

'which may by law be brought before him,' must be construed to mean a law in force at the time of the offer to bribe. This is the only reasonable construction of which it is susceptible. The offense must be complete at the time of theoffer, and cannot be made to depend upon the future action of the law-makers, who might possibly, some time in the future, enact a law which would require the officer to act upon questions which may come before him. This would make the offense depend upon a condition or contingency that might never happen. The views herein expressed find support in the cases of *In re* Yee Gee (D. C.), 83 Fed. Rep. 145; State v. Howard, 137 Mo. 288, 38 S. W. Rep. 908. The cases recited by respondent, People v. Markham, 64 Cal. 157, 30 Pac. Rep. 620, 49 Am. Rep. 700, and Commonwealth v. Donovan, 170 Mass. 228, 49 N. E. Rep. 104, do not militate against the doctrine herein announced."

Three authorities, cited by the state, are opposed to the decision of the court in this case. State v. Ellis, 33 N. J. L. 103, 97 Am. Dec. 707; Glover v. State, 109 Ind. 391, 10 N. E. Rep. 282; State v. Gardner (Ohio), 42 N. E. Rep. 999, 31 L. R. A. 660. In State v. Ellis, *supra*, application was made to the common council of Jersey City to lay a railroad track on one of the public streets of said city, and the defendant offered a bribe to one of the members of the council to vote in favor of the application. The contention was made by the defendant that the city council had no power to grant the application, hence there could be no bribery. The court ruled adversely to the contention of the defendant upon this proposition.

In Glover v. State, the defendant was school trustee. He was indicted for accepting a bribe to enter into a contract for the purchase of school furniture and supplies. It was not questioned that, as such trustee, he had the power and was authorized to make the contract. The indictment properly avers such power and authority. The contention of the appellant was that the contract, as reduced to writing, was not binding upon the school township. The court, upon that proposition, very correctly said: "It is not material whether the contract entered into could have been enforced against the township or not. If it was already executed, and the amount paid out of the township funds, of course it could not be material whether or not the contract was in writing. Nor could it be material in any event. The question is not whether appellant entered into a contract binding upon the township, but whether he accepted the bribe."

The case of State v. Gardner, directly supported the contention of the state in the Butler case that in a proceeding of this character the defendant cannot attack the constitutionality of the statute under which the officer is acting whom he attempted to bribe. The court in the Gardner case held that there could be a *de facto* officer without any *de jure* office, and that the constitutionality of an act creating an office cannot be called in question in a prosecution for bribery of an officer who assumes to perform the duties under the act creating the office. The Missouri court refused to follow the last case cited declaring it to be *bad law*.

NOTES OF IMPORTANT DECISIONS.

EVIDENCE—EXPECTANCY OF LIFE BASED ON LONGEVITY OF ANCESTORS.—In the case of Hamilton v. Michigan Cent. Ry. Co., 97 N. W. Rep. 392, the Supreme Court of Michigan denied the right of counsel to show an expectancy of life beyond that given in the mortality tables by experts who were to testify to their opinions, taking as a basis the mortality tables and the hypothesis that the plaintiff resembled his father and grandfather, who lived to advanced ages. The court says: "Counsel sought to show expectancy of life beyond that given in the mortality table, by experts who were to testify to their opinions, taking as a basis the mortality tables, and the hypothesis that the plaintiff resembled his father and grandfather, who lived to advanced ages. We think this testimony was properly excluded. Without passing upon the question of whether the longevity of the father and grandfather was competent evidence, we are agreed that when coupled with the proposition to show by experts the expectancy of life, based upon that testimony and the mortality tables, it was not competent."

EVIDENCE—EVIDENCE OF CONDUCT OF BLOODHOUNDS IN TRAILING CRIMINAL.—In the case of Brott v. State, 97 N. W. Rep. 593, the plaintiff had been convicted of burglary, and appealed on the ground that evidence had been admitted showing the conduct of b'oodhounds which had been placed upon the trail of the burglar. The Supreme Court of Nebraska reverses the case because of the admission of this evidence. The

court, in a very interesting opinion, says, in substance, that the bloodhound has a great reputation for sagacity, and there is a prevalent belief that in the pursuit and discovery of criminals he is practically infallible. This is a delusion which abundant experience has failed to dissipate. The sleuth-hound of fiction is a marvelous dog, but we find nothing quite like him in real life. In the present case the dog was not put upon the trail until twelve hours after the burglar had left. The situation which the dog had to deal with was an exceptionally difficult one, owing to the fact that the trail had been crossed and recrossed by many people, and the sun had been shining on it steadily for hours. The bloodhound is endowed with a remarkably keen scent. He has great ability for differentiating smells. His method of trailing is simple and well understood. Particles of waste matter given off by a particular individual fall to the ground, and while undergoing chemical change come in contact with the olfactory nerves of the dog and produce an impression which he is able to recognize. A man may be easily trailed in the woods or in the country for a short time, but in the city the trailing is more difficult, and often impossible. Difficulties do not deter the bloodhound. He always follows some scent, and he always goes somewhere. Undoubtedly nice and delicate questions are time and again presented to him for decision, but the considerations that induce him in a particular case to adopt one conclusion rather than another cannot be presented to the jury. They cannot know whether the reasons on which he acted were good or bad, nor whether his faith in the identity of the scent which he has followed is strong or weak. Apparently, because of the lack of opportunity to cross-examine a bloodhound as to the reasons which govern him in making his decisions, the court holds that the evidence must be rejected.

BANKRUPTCY—STOCKHOLDER DECLARED A BANKRUPT AS TO CALLS OF DEFUNCT CORPORATION ALTHOUGH THE LATTER IS INDEBTED TO HIM FOR A LARGER AMOUNT.—In the case of *Re* A Debtor, the Court of Appeal of England has come to a decision which produces the result that a man who is indebted to a company for calls, and to whom the company is indebted in a larger amount, can be made a bankrupt in respect of his debt to the company if the company is being wound up. This distinctly startling result is produced by the application of the rather artificial rule that after liquidation, although the action is brought in the name of the company, it is really brought by the liquidator for the benefit of the creditors of the company whom he represents. Therefore, once you arrive at this state of the facts, the question of the company's indebtedness is immaterial. If a person owes only 50 pounds in respect of calls, and the company owes him 5,000 pounds for moneys advanced, still, in an action by the liquidator, he cannot set off the company's debt, since there is no "mutuality." Neither can he, the court has just decided, use the fact of such indebtedness as a ground for getting a bankruptcy notice founded on the debt for 50 pounds set aside, since it is not a "counterclaim, set off, or cross-demand which equals or exceeds the amount of the judgment debt, and which he could not set up in the action in which the judgment was obtained," within section 4 (g) of the Bankruptcy Act, 1883. Such a set off must be enforceable at the moment of the hearing of the application to set aside the bankruptcy notice. The act of bankruptcy will become complete, and of course this indebtedness by the company to the debtor cannot be set up again as a defense to a petition founded on it.

The Solicitor's Journal in commenting on the effect of this decision, says: "It may be that the court, which has a discretion to make or refuse a receiving order, would refuse to make the order in such circumstances. But, in view of the nature of the reasoning on which the court arrived at its decision, it is hard to see how such an exercise of its discretion could be upheld. It is noticeable that Vaughan Williams, L. J., characterized the case as very difficult, and only came to his decision with some doubt. The result certainly seems a very unsatisfactory one, and calculated to work considerable injustice. Leave to appeal, however, does not appear to have been asked for, so that the law on the subject must be considered to be settled for the present.

NUISANCES—WHEN THE KEEPING OF BEES MAY BECOME AN ACTIONABLE NUISANCE.—A case of some novelty has just been heard in the Irish Courts. In O'Gorman v. O'Gorman (Ir. R. K. B. D., vol. 2, 573) the action was to recover damages for injury sustained by the plaintiff owing to the defendants' negligence. The defendants were farmers occupying land adjoining that of the plaintiff's father. The defendants had, some years since, placed two straw beehives on their land, and the number was increased year by year, until there were at the date of the injury to the plaintiff from fourteen to twenty beehives at the boundary fence of the defendants and in close proximity to the dwelling house of the plaintiff's father. Complaints had been made to the defendants of annoyance caused by the swarming of the bees, and they had been told that men engaged in haymaking on the adjoining land had been obliged to cease working owing to attacks from these insects. Upon the day of the occurrence in question the plaintiff brought a horse into his farmyard near the boundary fence for the purpose of harnessing it. He was putting on the collar and harness when a swarm of bees came across the fence which separated the premises and lighted upon the horse, which immediately took fright, and as it started and turned, the plaintiff's foot caught in the reins, and he was jammed against the wall of the house and his spine was seriously injured. The bees were at the time being driven from the

neighborhood of the hives by a "smoker," which was being applied to some of the hives by the defendant with the object of removing the honey. The defendant at the time wore a large hat with a crepe veil over his face, had his hands covered, and a cloak thrown over his body to protect him from the bees; and he admitted that he knew that the plaintiff was in the habit of coming into the farmyard for the purpose of harnessing his horse. The jury found that the plaintiff's injuries were caused by the bees having stung his horse; that they were kept on the defendants' land negligently, in unreasonable numbers, at an unreasonable place, and with appreciable danger to the inhabitants of the adjoining farm, and that the honey was not taken from the hives on the occasion in question with reasonable care, skill, and prudence. They assessed the damages at $1,000.

The Solicitor's Journal in commenting on this case said: "The argument in the Divisional Court was that there was not sufficient evidence of negligence to support the action; that while the keeping of bees was an industry as old as the world itself, there was no previous instance of an action of this description; that owners of bees were not answerable for trespasses committed by them owing to the impossibility of keeping them under restraint, and that there was no analogy to the liability for mischief done by ordinary domestic animals. We have certainly been unable to find any instance of an action founded upon mischief by the defendants' bees, but if they fly abroad and cause damage to the king's subjects, it is difficult to see why an action should not be maintained by anyone who sustains a private injury from them. The fact that any such injury is not usually of a serious character may be the reason why the parties injured have not resorted to the law courts. The King's Bench Division (Kenny, Barton, and Wright, JJ.) held that upon the findings of the jury, there was sufficient proof of negligence to uphold the verdict, and that it must be taken that the defendant had set up what was an actionable nuisance to the injury of his neighbors."

EXTRATERRITORIAL POWERS OF RECEIVERS: RIGHTS OF ACTION IN FOREIGN COURTS.

General Rule.—The general rule is that the functions and powers of a receiver, for the purpose of litigation, are limited to the state within which he has been appointed, and that courts of equity cannot acquire extraterritorial jurisdiction over property by appointing receivers.[1] This rule is obviated in a great many instances on the ground of state comity, which will be commented upon in subsequent paragraphs. The case of Booth v. Clark,[2] emanating from the Supreme Court of the United States, is the most conspicuous authority in support of the general doctrine. Mr. Justice Wayne delivered the opinion of the court in that case and maintained that a court of equity could not confer extraterritorial powers upon a receiver, and that a receiver could not, on principles of comity, exercise the rights of a privileged suitor in a foreign court or another jurisdiction. The opinion does not dispute the right of a judgment creditor to pursue his debtor in a foreign state, but denies the power of one court to clothe a receiver with extraterritorial authority. The best elucidation of the rule is to be found in the language of the opinion itself. The following excerpt therefrom discloses the gist of the court's logic: "We think that a receiver could not be admitted to the comity extended to judgment creditors without an entire departure from the chancery proceedings as to the manner of his appointment, the securities which are taken from him for the performance of his duties, and the direction which the court has over him in the collection of the estate of the debtor, and the application and distribution of them. If he seeks to be recognized in another jurisdiction, it is to take the fund there out of it, without such court having any control of his subsequent action in respect to it, and without his having even official power to give security to the court, the aid of which he seeks, for his faithful conduct and official accountability."[3] The case of Farmers' and Merchants' Insurance Company v. Needles,[4] handed down by the Supreme Court of Missouri, is a leading authority adhering to the rule established in Booth v. Clark, *supra*. In that case it appeared that the plaintiff corporation was created under the laws of Illinois, with power to sue, etc., and that a receiver was appointed in that state with the rights, property and assets of the plaintiff corporation, and that as such receiver he was in possession of the same. The petition alleged the execution of a note by the defendant to the plaintiff

[1] Booth v. Clark, 17 How. 322; Farmers' and Merchants' Insurance Company v. Needles, 52 Mo. 17; Filkins v. Nunnenmacher, 81 Wis. 91; Hazard v. Durant, 19 Fed. Rep. 471; Atkins v. Wabash, etc., R. Co., 29 Fed. Rep. 173, 26 Am. & Eng. R. Cas. 452.

[2] 17 How. 322.

[3] 17 How. 322, at page 338.

[4] 52 Mo. 17.

corporation and that the note was a part of the assets and property in the hands of the receiver and that the same was due and unpaid. The court held that a demurrer to the complaint should be sustained for two reasons: 1st. That the averments of the petition did not show that the note had ever been assigned or transferred by the corporation. 2d. That a receiver cannot sue in a foreign jurisdiction for the property of the debtor. High on Receivers[5] speaks of this rule as the prevailing doctrine, "sustained by the weight of authority in various states;" but this statement may justly be questioned in the light of the modern holdings.

Qualification of General Rule.—The foregoing rule has not been strictly followed by the majority of the states. In so far as that doctrine maintains that receivers cannot, as a matter of right, exercise extraterritorial authority, most of the decisions concur; that is, they adhere to the theory of that doctrine. But in practice the rule is effectually overthrown by most of the courts on principles of interstate comity. It may safely be said that the prevailing doctrine permits receivers appointed in one state to go into foreign states or jurisdictions, under certain limitations, and institute suits for the recovery of demands due to the person or estate subject to their receiverships.[6] The exception to the general rule is regarded with much favor, and as said in the Amer. & Eng. Ency. of Law (1st Ed.),[7] "the authorities supporting the exception are so numerous, and the language of the courts so favorable to its extension, that it seems certain the exception will soon, if it has not already, supersede the general rule." An examination of the authorities will readily disclose that the tendency of modern adjudications is in favor of a liberal extension of interstate comity and against a provincial policy which would deny proper effect to the judicial proceedings of sister states.[8] In Pennsylvania it has been held that, where a receiver of a corporation has been appointed by a court of competent jurisdiction in another state, a creditor who resides in that state, and is bound by the decree of the court appointing the receiver, can not, in an attachment or execution recover the assets of the corporation in another state, which the receiver claims.[9] In Indiana the question first came up for determination in Metzner v. Bauer,[10] and the supreme court of that state adopted the exception to the general rule, and held that receivers may exercise extraterritorial powers as a matter of comity between states. The New Jersey courts adhere to the proposition that a receiver cannot, as a matter of positive right, maintain suits in foreign jurisdictions, and especially, if to permit him to do so, the claims and rights of resident creditors would be in any manner jeopardized; but the same courts hold that "after completely protecting its own citizens and laws, the dictates of international comity seem to require that the officer of the foreign jurisdiction should be acknowledged and aided."[11] And, in Falk v. Jane,[12] the Court of Chancery of New Jersey held that a foreign receiver will not be denied recognition as a suitor, even though a claim of a resident creditor will be injuriously affected thereby, when such receiver prosecutes his suit solely in behalf of a party who is also a citizen of New Jersey. The same court has held that a receiver of partnership assets, appointed by a competent court of another state, may maintain an action in New Jersey to set aside a sale of partnership assets situated in New Jersey, made by one partner in fraud of the other, when there are no creditors of the partnership, and the only

[5] Sec. 239, p. 205.

[6] Gilman v. Ketcham, 54 N. W. Rep. 395; Hurd v. City of Elizabeth, 41 N. J. L. 1; Falk v. Jane, 23 Atl. Rep. 813; Soberheim v. Wheeler, 46 N. J. Eq. 614, 18 Atl. Rep. 234; Toronto General Trust Co. v. Chicago B. & Q. R. Co. (N. Y.), 25 N. E. Rep. 198; Bagby v. Railroad Co., 86 Pa. St. 291; Metzner v. Bauer, 98 Ind. 425; Catlin v. Wilcox Silver Plate Co., 123 Ind. 477; Bank v. McCleod, 38 Ohio St. 174; Comstock v. Frederickson, 51 Minn. 350; *In re* Norwood. 3 Biss. 504; Castleman v. Templeman, 40 Atl. Rep. 275; Boulware v. Davis (Ala.), 8 So. Rep. 84; Dyer v. Power, 14 N. Y. Supp. 873; Peters v. Foster, 10 N. Y. Supp. 389; Hale v. Tyler, 104 Fed. Rep. 757; Hunfeld v. Automaton Piano Co., 66 Fed. Rep. 788; Phoenix Ins. Co. v. Schultz, 80 Fed. Rep. 337; Hale v. Hardon, 95 Fed. Rep. 747; Kirtly v. Holmes, 107 Fed. Rep. 1; Bidlack v. Mason, 26 N. J. Eq. 232; Beach on Receivers, secs. 16, 19, 682; Runk v. St. John, 29 Barb. 585; Sercomb v. Catlin, 128 Ill. 562.

[7] Vol. 20, p. 244.

[8] Gilman v. Ketcham, 54 N. W. Rep. 397.

[9] Bagby v. Railroad Co., 86 Pa. St. 291.

[10] 98 Ind. 425.

[11] Hurd v. City of Elizabeth, 41 N. J. L. 1; Falk v. Jane, 49 N. J. Eq. 484, 23 Atl. Rep. 813; Soberheimer v. Wheeler, 45 N. J. Eq. 234, 18 Atl. Rep. 234.

[12] 49 N. J. Eq. 484, 23 Atl. Rep. 813.]

person to be benefited is the partner who is defrauded.[13] The Supreme Court of Ohio, in Bank v. McCleod,[14] held that a receiver appointed under the authority of the court of one state, and vested with the title of property temporarily in another, might, under the comity between states, by an action brought in the latter state in his own name, assert his right to the possession of it, where such right was not in conflict with the rights of the citizens of Ohio, nor against the policy of its laws. The same doctrine prevails in Minnesota,[15] and also in Illinois,[16] and in Alabama.[17] The federal courts, with the exception of the Supreme Court of the United States, have, as a rule, recognized foreign receivers.[18] In Humpfeld v. Automaton Piano Co.,[19] it was held that the federal courts will ordinarily entertain jurisdiction of suits instituted by receivers appointed in courts of the various states, and in that particular case held that jurisdiction would be entertained of a suit to restrain the infringement of a patent brought by a receiver of a state court, without said receiver havir g first procured leave of the state court to sue. And in Hale v. Tyler,[20] it was held that a special receiver, appointed by a Minneapolis court for that purpose, could maintain ancillary suits in a federal court of another jurisdiction to enforce the statutory liability of non-resident stockholders in an insolvent Minnesota corporation.

Where a railroad passes through two states, a receiver may be appointed in one state to take charge of mortgaged property lying in both states.[21] So a court of one state may appoint a receiver of personal property within its jurisdiction and involved in pending litigation, although the defendant is a resident of another state.[22] And some of the authorities and text-writers refer to certain English cases where the courts of that country have appointed receivers to take charge of landed possessions in British India.[23]

Where property to which a receiver is entitled has been fraudulently removed from the jurisdiction of the court appointing him, he has been allowed to pursue the property into other states and maintain actions for the possession thereof in foreign courts.[24] And when a receiver, in an action brought by him in the state of his appointment, procures a judgment, he may maintain a suit upon that judgment in other states, on the ground that he then proceeds as a judgment creditor.[25] So where a receiver's rights do not depend solely upon the fact of his appointment, but, in addition, the person over whom he is appointed receiver has assigned all his property to such receiver, which assignment is properly executed and recorded, when required, it is said that in seeking the recognition of foreign courts, he comes not merely in the capacity of receiver, but as an assignee, and that his designation as receiver may be treated as *descriptio personæ*.[26]

The extra-territorial rights of receivers are frequently compared to the rights of assignees for the benefit of creditors.[27] If an assigment is valid in one state where made, it will, as a rule, be enforced in another state as a matter of comity, but not to the prejudice of the citizens of the latter state, who may have demands against the assignor.[28] Accordingly, it has been said that "foreign receivers and assignees, taking their title to property by virtue of foreign laws and legal proceedings in foreign courts, may invade other states and maintain suits when the same do not come in conflict with the rights or interests of domestic creditors."[29] And the

[13] Sobernheimer v. Wheeler, 45 N. J. Eq. 614, 18 Atl. Rep. 234.

[14] 38 Ohio St. 174.

[15] Comstock v. Frederickson, 51 Minn. 350.

[16] Sercomb v. Catlin, 128 Ill. 562.

[17] Boulware v. Davis (Ala.), 8 So. Rep. 84.

[18] Hale v. Tyler, 104 Fed. Rep. 757; Phoenix Ins. Co. v. Schultz, 80 Fed. Rep. 337; Hale v. Hardon, 95 Fed. Rep. 747; Kirtly v. Holmes, 107 Fed. Rep. 1; Humpfeld v. Automaton Piano Co., 66 Fed. Rep. 788.

[19] 66 Fed. Rep. 788.

[20] 104 Fed. Rep. 757.

[21] State v. Northern Cent. R. Co., 18 Md. 215.

[22] Hellebush v. Blake, 119 Ind. 350.

[23] Keys v. Keys, 1 Beav. 425; Cockburn v. Raphael, 2 S. & S. 454.

[24] McAlpin v. Jones, 10 La. Ann. 552; Paradise v. Farmers' and Merchants' Bank, 5 La. Ann. 710; Bidlack v. Mason, 26 N. J. Eq. 232.

[25] Wilkinson v. Culver, 25 Fed. Rep. 639, 23 Blatchf. 416.

[26] Graydon v. Church, 7 Mich. 36.

[27] Gilman v. Ketcham, 54 N. W. Rep. 395, 397, and cases there cited.

[28] Woodward v. Brooks, 128 Ill. 222, 20 N. E. R p. 198.

[29] Toronto General Trust Co. v. Chicago, B. & Q. R. Co. (N. Y.), 25 N. E. Rep. 198.

Supreme Court of the United States, in Cole v. Cunningham,[30] reviewed the rights of assignees in the light of interstate comity, and held that a creditor who is a citizen and resident of the same state with his debtor, against whom insolvent proceedings have been instituted in said state, is bound by the assignment of the debtor's property in such proceedings, and if he attempts to attach or seize the personal property of the debtor, situate in another state and embraced in the assignment, he may be restrained by injunction by the courts of the state in which he and his debtor reside.

Limitations Upon the Doctrine of Comity.—The same courts which countenance foreign receivers have uniformly and jealously protected the rights of resident creditors and citizens and the policy of domestic laws as against that doctrine, and have consistently denied its extension wherever it would encroach upon or jeopardize those rights. A careful research of the books will demonstrate that no court has gone so far in entertaining jurisdiction of suits by foreign receivers as to discriminate against resident creditors or to nullify the policy of domestic laws. This qualification so placed upon the powers of foreign receivers is a salutary as well as a necessary one. State comity should not be indulged in to the extent of granting favors to foreign suitors in preference to the *bona fide* claims of resident creditors. The expression "extraterritorial powers" is a comprehensive one, and could be enlarged and abused to the positive detriment of innocent parties. One of the incidents of that doctrine is the seizure by a foreign receiver of property in one state and the removal thereof from the jurisdiction of the courts of that state without such receiver being accountable to those courts. A receiver is directly responsible to the court by which he is appointed; but in a foreign state he proceeds as a privileged suitor, and at the same time being beyond the immediate scrutiny and control of the court appointing him. "Extraterritorial" has been defined as follows: "Not subject to the jurisdiction of the laws of the country in which one resides."[31] So a receiver invoking extraterritorial powers is not directy subject to the courts of the sister state in which he seeks recognition and exercises his functions, except in matters of pleading and procedure. His power as a receiver in a foreign jurisdiction is, in fact, a legal fiction by which he assumes to prosecute actions in another state, as though he were still within the immediate domain of the court appointing him; in fact, a legal fiction somewhat similar to that by which the persons and residences of ambassadors and sovereigns when abroad are treated as being within their own territory. It follows, therefore, as a matter of sound logic and justice, that this fiction will not be tolerated to the jeopardy or exclusion of the just claims of resident creditors.[32] The citation of cases is needless in this particular, for the authorities are unanimous in vigorously applying this qualification to the doctrine of comity, whenever cause for its application is apparent. A practical demonstration of this qualification is found in the case of Corn Exchange Bank of Chicago v. Rockwell,[33] in which the Appellate Court of Illinois denied the appointment of an ancillary receiver in that state who should be required to account to a receiver appointed in New York to take charge of an insolvent New York corporation, for the reason that the original receiver in New York having theretofore taken possession of the corporation's assets in Illinois and having been dispossessed by a sheriff under attachment on a valid claim of a resident creditor, that therefore the doctrine of state comity could not be extended to the detriment or impairment of resident claimants. The case of Day v. Postal Tel. Co.[34] is another specific illustration of this qualification.

The recognition of foreign receivers is based absolutely on courtesy and is not regarded in any manner as a right. In the case of Barley v. Gittings,[35] it was expressly announced that recognition by the courts of the District of Columbia of receivers appointed in foreign jurisdictions is merely a privilege founded upon comity and not a positive

[30] 133 U. S. 107, 10 Sup. Ct. Rep. 269.

[31] Century Dictionary.

[32] Corn Exchange Bank of Chicago v. Rockwell, 58 Ill. App. 506; Day v. Postal Tel. Co. (Md.), 7 Atl. Rep. 608; Catlin v. Wilcox Silver Plate Co., 123 Ind. 477; Bank v. McCleod, 38 Ohio St. 174, 20 Am. & Eng. Ency. Law, 1st Ed., p. 67; Hurd v. City of Elizabeth, 41 N. J. L. 1.

[33] 58 Ill. App. 506.

[34] 7 Atl. Rep. 608.

[35] 15 App. D. C. 427.

right. And in Castleman v. Templeman,[36] the Court of Appeals of Maryland, after relating such circumstances as warranted the recognition of foreign receivers, suggests "that when a receiver appointed by the court of one state desires to sue in a court of another state, it would be the proper practice for him to file a petition, setting forth such facts as we have indicated as sufficient to enable him to do so, in the latter court, asking permission to sue."

In Catlin v. The Wilcox Silver-Plate Company,[37] the Supreme Court of Indiana, while recognizing foreign receivers as a matter of comity, denied recognition to the receiver in that case, holding that the available legal authority of a receiver is co-extensive with the jurisdiction only of the court by which he was appointed, when the right of precedence or priority of creditors is asserted in respect to property of a non-resident debtor, which the receiver has not yet reduced to possession; and that when non-resident creditors are properly in the courts of Indiana pursuing their remedies they stand in the same position as resident creditors as against a foreign receiver of the property of the debtor.

It follows from the foregoing authorities that three leading principles have been evolved and established by the courts of this country, touching upon the subject under discussion: 1st. That a receiver cannot maintain suits in foreign courts as a matter of strict right. 2d. That foreign receivers will ordinarily be recognized as a matter of comity. 3d. That comity will not be extended to foreign receivers where the claims of resident creditors or the policy of domestic laws would be jeopardized or impaired.

Muncie, Ind. WALTER J. LOTZ.

[36] 40 Atl. Rep. 275.
[37] 123 Ind. 477.

CONSTITUTIONAL LAW — DISCRIMINATION AGAINST NEGRO RACE IN SELECTION OF GRAND JURY.

SMITH v. STATE.

Court of Criminal Appeals of Texas, December 2, 1903.

Where jury commissioners, appointed in a county where a fourth of the population were negroes, to impanel juries for the trial of a negro, were all white men, and of the grand and petit jury lists drawn only one name was that of a negro, and he was either dead or had left the county years before, there was a discrimination in violation of Const. Amend. 14, guaranteeing equal protection of the law, though it was through an error that the negro drawn was not a resident.

Where accused and his counsel made efforts to act in regard to the impanelment of a grand jury, but could get no information as to its action concerning him, in time, the failure to challenge the panel does not deprive accused of his right to raise the question of discrimination in its formation.

Where a negro has been tried three times in the same county for homicide, and the race question was prominent, a change of venue should be granted on another trial, though witnesses testify that in their opinion a fair and impartial jury can be secured in the county.

Brooks, J., dissenting.

HENDERSON, J.: Appellant was convicted of murder in the first degree, and his punishment assessed at death. This case has been before this court twice before, and on both occasions it was reversed, because in the formation and impanelment of the grand jury which found the indictments against appellant (a negro) he was discriminated against on the part of the court. Smith v. State, 42 Tex.Cr. Rep. 220, 58 S. W. Rep. 97; Smith v. State, 69 S. W. Rep. 151, 5 Tex. Ct. Rep. 434. Since the last reversal a new grand jury was impaneled, and appellant reindicted. He made a motion to quash the indictment on the same ground as heretofore, to-wit: "That appellant was a negro, and was charged with the murder of Aria Taylor, a white woman; that no negroes were placed on the grand jury which indicted him, and that there are from 2,000 to 3,000 negroes resident citizens of Grayson county, who are qualified jurors, and who were qualified to sit as grand jurors, being about one-fourth of the jury population of said county; that the jury commissioners appointed by the court were all white men; that in selecting the grand jury they drew no negroes on said grand jury, and in this connection they discriminated against him in the formation of said grand jury and thus denied him the equal protection of the law, which is guaranteed him under the fourteenth amendment to the Constitution of the United States and the decisions thereunder."

We have carefully examined the record testimony contained in this bill of exceptions, and discover no material change from the conditions attending the impanelment of the two former grand juries, except here it is apparent that there was an endeavor, as was stated by the assistant county attorney of Grayson county in his argument, to avoid the effect of the decisions of the Supreme Court of the United States and of this court. In the former trials no person of African descent was drawn on the grand jury, but n the present instance it appears the commissioners managed to draw one person of African descent. On investigation, however, it was shown that he was either dead or had left the county a number of years before this offense was committed. While the commissioners, in their testimony, attribute this mistake to an accident,

still it does not occur to us that it relieves the situation, even if they had drawn a negro juror who was a citizen of the county, and who was still alive. Of itself it would not show a lack of discrimination against the negro race. They testify that their purpose was to give the negroes representation on both the grand and petit juries, and that they decided to put one negro on each list. We do not understand that the law requires that negroes shall be drawn or serve on juries, but the law does require that in the selection of grand and petit juries the negro race be not discriminated against where a negro is to be indicted or tried. It is no answer to this proposition to say that, in order to meet the decisions of the Supreme Court of the United States, they discussed the question, and decided to place one negro on the grand jury, in order that the negro race be represented. An effort to comply with the fourteenth amendment and the decision thereunder, instead of endeavoring to avoid the same, in a colored population shown to exist in Grayson county, might have entitled the negro race to a greater representation on both the grand and petit juries than is here shown. And when we take in connection with this the fact that the commissioners drew or selected a dead negro to serve on the grand jury, it makes it evident that they did not exercise that care in the selection of as important a body as the grand jury that would indicate their purpose was not to discriminate against the negroes. In this connection we refer to the testimony of Judge Bryant, the federal judge of that district, who states that he has negroes from Grayson county, both on the grand and petit juries, serving during his court, showing that there must be persons of African descent who can be found, and who are considered capable of performing duties devolving on grand juries. While we fully understand the sentiment that may have actuated the officers of the court below, and appreciate their disinclination to place the administration of the law, even in part, in the hands of a people assumed to be inferior to the white race, yet under the law and before the law all are equals, and in its administration no favors can be shown, nor can either the letter or spirit of the law be ignored.

It is said, however, that appellant should have exercised his right of challenge to the array, and having failed to do so, he cannot now complain, although his race may have been discriminated against in the selection of a grand jury. In reply to this we would observe that there is some evidence that appellant made an effort to get into communication with the court in regard to the impanelment of the grand jury, and wrote a note, and gave it to one of the attendants at the jail; but it does not appear to have reached any officer of the court or the grand jury. Moreover, his lawyer, Mr. Cox, who had previously managed the case on appointment, but was on the eve of retiring from the defense of appellant, brought this matter to the attention of the court about the time the grand jury were impaneled, or as they were going to their room after impanelment, and requested that, if it was intended to reindict Bob Smith, he wanted an opportunity to challenge the array. The judge informed him that he knew nothing about it. It does occur to us, under the circumstances of this case, that it was the duty of the judge, when this matter was brought to his attention to have informed himself, through the county attorney, as to the purpose of reindicting appellant; and whether the grand jurors were then being impaneled, or about retiring, it would have been an easy matter to have recalled them, and thus have afforded appellant an opportunity to raise the question at that stage of the procedure. This was not done.

In reversing this case we can not forbear mentioning the fact that certain members of the bar of Grayson county, under appointment of the court, and without compensation, have represented appellant both in the various trials in the lower court and this court. Their services have not been of a perfunctory character; on the contrary, they have manifested both courage and ability. Appreciating fully the genius and spirit of our free institutions they have left no stone unturned in order to afford defendant every defense guaranteed to him under the law. And it may not be improper here to observe that no state has a better system of procedure safeguarding every right of a defendant charged with a criminal offense than has our own commonwealth. If a person is charged with a capital felony, and is too poor to employ counsel, our statutes provide for the appointment of counsel, who are required to serve without fee or reward. Throughout the trial the presumption of innocence follows him as a shield for his protection, and every reasonable doubt is resolved in his favor; and, better still, and in this respect vastly superior to the federal procedure, no judge during the trial or in his charge dare intimate his opinion as to defendant's guilt. While high overhead and pervading all is that provision of our Bill of Rights which guarantees to a defendant a trial by a fair and an impartial jury; and in keeping with this provision every law in our statutes on this subject is in consonance with this constitutional guaranty. We do not hesitate to assert that under our system of procedure a defendant on trial for a criminal offense is not only vouchsafed a fair trial, but a liberal trial, with every intendment in his favor; and that, no matter what his race or color, he is afforded the equal protection of the laws, which, in our opinion, is best preserved to him by lodging the administration thereof in the hands of the most cultured and intelligent of our citizenship, without regard to other qualifications. However, the Supreme Court of the United States, in construing the fourteenth amendment to the Constitution, have

added what they deem another guaranty of fair trial by jury where the rights of a member of the negro race is involved. Carter v. State, 39 Tex. Cr. Rep. 345, 46 S. W. Rep. 236, 48 S. W. Rep. 508, and authorities there cited. We are bound to recognize the fact that the federal constitution and the laws of congress enacted thereunder are the supreme law, so far as we are concerned. Although we may differ with that learned tribunal in the construction of said amendment, still their interpretation thereof is the paramount law, and it is our duty to follow it, and administer it fairly and impartially.

Reviewing the entire record, we believe it is manifest that under federal decisions on this subject the Supreme Court of the United States would not hesitate in holding that in the impanelment of the grand jury which found this bill of indictment appellant was discriminated against on account of his race and color, and, so believing, we are constrained to reverse and remand the case, with instructions to the lower court in the impanelment of a new grand jury to reindict appellant to afford him the fullest latitude in the exercise of his rights in selecting a grand jury. By pursuing this course future expense and delay will be avoided, while at the same time every right appellant is entitled to under the law will be guaranteed.

We would further observe, in regard to the change of venue, that the record before us, while it shows perhaps on the part of every witness testifying that in his opinion appellant could get a fair and impartial jury in Grayson county, yet it is apparent even in the minds of a majority of these witnesses there is some question about it, that it would require an effort to secure such jury. This has been brought about by various causes, chiefly on account of the race question, and the notoriety of this homicide, occasioned by frequent trials, and in which this race question has been projected to such an extent as to incite prejudice against this appellant. As evidence of this feeling, on one occasion when a mob had failed to secure another victim for whom they were seeking, there was strong talk amongst them of going to the jail at Sherman and lynching Bob Smith. We believe, under the facts of this case, if the question should be presented again in this shape, after indictment found, it would be the duty of the court to change the venue, in order that there be no question as to the fairness and impartiality of a trial.

NOTE.—*Discrimination in the Selection of Jurors on Account of Race, Color or Previous Condition of Servitude.*—Of course on a question of this character we must look first to the highest of all authorities on questions concerning the federal constitution —the United States Supreme Court.

The first case on this question was that of Strander v. West Virginia, 100 U. S. 303. In that case it appeared that a statute of West Virginia, which, in effect, singled out and denied to colored citizens the right and privilege of participating in the administration of the law, as jurors, because of their color, though qualified in all other respects. The court held that such a statute was a brand upon the colored race and a discrimination against them which was forbidden by the fourteenth amendment. "It denies," says Justice Strong, "to such citizens the equal protection of the laws, since the constitution of juries is a very essential part of the protection which the trial by jury is intended to secure. The very idea of a jury is that it is a body of men composed of the peers or equals of the person whose rights it is selected or summoned to determine; that is, of persons having the same legal status in society as that which he holds."

The next case was that of Virginia v. Rives, 100 U. S. 313. In this case the defendant moved in the state court that the venire be so modified that one-third or some portion of the jury should be composed of his own race, which motion was denied. The court held that the denial of that motion was not a denial of a right secured to him by any law providing for the equal civil rights of citizens of the United States, or by any statute, or by the fourteenth amendment. "A mixed jury," says the court, "in a particular case is not essential to the equal protection of the laws. It is a right to which any colored man is entitled, that, in the selection of jurors to pass upon his life, liberty or property, there shall be no exclusion of his race, and no discrimination against them, because of his color. But that is a different thing from that which is claimed, as of right, and denied by the state court, viz., a right to have the jury composed in part of colored men."

The case of *Ex parte* Virginia, 100 U. S. 339, was next in point of time. This case decided that a judge of a county court was liable to fine and imprisonment for excluding members of the colored race from service on the jury, under Act of Congress, 1875, which provided that "any officer charged with any duty in the selection of jurors, who shall exclude or fail to summon any citizen on account of race, color or previous condition of servitude, shall be deemed guilty of a misdemeanor, and be fined not more than $5,000. After holding such act constitutional the court goes on to say: "Whoever by virtue of his public position under a state government deprives another of life, liberty, or property, without due process of law, or denies or takes away the equal protection of the laws, violates the inhibition; and as he acts in the name of and for the state, and is clothed with her power, his act is her act. Otherwise, the inhibition has no meaning, and the state has clothed one of her agents with power to annul or evade it."

A case of great importance was that of Neal v. Delaware, 103 U. S. 370. In this case the court held that the exclusion, because of their race and color, of citizens of African descent from the grand jury that found, and from the petit jury that was summoned to try, the indictment, if made by the jury commissioner, without authority derived from the constitution and laws of the United States, was a violation of the prisoner's rights, under the constitution and laws of the United States, which the trial court was bound to redress; and that the remedy for any failure in that respect was ultimately in the Supreme Court upon writ of error. Strong dissenting opinions were filed in this case by Chief Justice Waite and Mr. Justice Field.

Another case is that of Gibson v. Mississippi, 162 U. S. 565. In this case it was held that the fact that citizens of the African race had been excluded, because of their race, from service on previous grand

juries as well as from the grand jury which returned the particular indictment in the case on trial would not authorize a removal of the prosecution under section 641 of the revised statutes, but is competent evidence only on a motion to quash the indictment. It was also held that the Mississippi constitution, providing for an educational qualification for jurors, was not a discrimination against the colored race.

The case of Smith v. Mississippi, 162 U. S. 592, comes next. There it was decided, that a motion to quash an indictment against a person of African descent upon the ground that it was found by a grand jury from which were excluded because of their race, persons of the race to which the accused belongs, can be sustained only by evidence, independently of the facts stated in the motion to quash.

Other decisions holding similar to the above, and resting on the above for authority are as follows: Bush v. Kentucky, 107 U. S. 110; Green v. State, 73 Ala. 26; Commonwealth v. Johnson, 78 Ky. 509; Haggard v. Commonwealth, 79 Ky. 366; Cavitt v. State, 15 Tex. App. 190; Cooper v. State, 64 Md. 41; State v. Murray, 47 La. Ann. 903; Commonwealth v. Wright, 79 Ky. 22, 42 Am. Rep. 203.

JETSAM AND FLOTSAM.

JUDGE ARRINGTON'S "APOSTROPHE TO WATER."

Judge Alfred W. Arrington was one of the greatest lawyers in Illinois. He had a very poetic temperament, which often found expression in his work before the bar. One of his most celebrated effusions was that which has been entitled an "Apostrophe to Water." It is as follows:

"Look at that, ye thirsty ones of earth! Behold it! See its purity! How it glitters, as if a mass of liquid gems! It is a beverage that was brewed by the hand of the Almighty himself. Not in the simmering still or smoking fires, choked with poisonous gases and surrounded by the stench of sickening odors and rank corruption, doth our Father in heaven prepare the precious essence of life, the pure cold water, but in the green glade and grassy dell, where the red deer wanders and the child loves to play — there God brews it; and down, down in the deepest valleys, where the fountains murmur and the rills sing; and high upon the tall mountain-tops, where the naked granite glitters like gold in the sun, where the storm-clouds brood and the thunders crash; and away, far out on the wide sea, where the hurricanes howl music and the big waves roar the chorus heralding the march of God—there he brews it, that beverage of life, health-giving water. And everywhere it is a thing of beauty, gleaming in the dew-drop, singing in the summer rain, shining in the ice-gem, till the trees all seem turned into living jewels, spreading a golden veil over the setting sun or white gauze around the midnight moon, sporting in the cataract, sleeping in the glacier, dancing in the hail-shower, folding its bright curtain softly about the wintry world, and weaving the many-colored iris—that seraph's zone of the sky, whose warp is the rainbow of earth, whose woof is the sunbeam of heaven, all checkered o'er with celestial flowers by the mystic hand of rarefaction — still always it is beautiful, that blessed life water! No poison bubbles on the brink. Its foam brings no sadness or murder, no blood-stains in its limpid glass. Broken-hearted wives, pale widows and starving orphans shed no tears in its depths. No drunkard's shrieking ghost from the grave curses it in words of eternal despair. Beautiful, pure, blessed and glorious! Give me forever the sparkling, pure cold water."

FINGER-TIPS AS EVIDENCE.

A cursory glance at the finger-tips would scarcely lead one to suppose that they could serve the purposes of identification. But they can, and do. The tip of the finger tells a very remarkable tale. Take a sheet of ordinary white paper, not too highly glazed, and spread over it a little printer's ink. On this lay the bulb of the finger lightly, and observe the pattern that is left. You have there an absolute impression taken direct from the body, which might be the means in certain circumstances of sending you to or saving you from the gallows. It might procure you a fortune, or prevent you from being robbed of one; it might secure your being identified as John Jones in a situation in which some malicious person was endeavoring to prove that you were William Smith.

For this impression from your finger is practically unique. The pattern may be what is called a "whorl," a "loop," an "arch," or something else. The all-important point is that it is absolutely your own, and can be claimed by nobody else; it has been estimated that the chance of two finger-prints being identical is rather less than one in sixty-four thousand millions. This pattern persists, moreover, throughout the period of human life—and after. Such as it is found on the fingertip of a child, it is traceable on the finger of the same individual in extreme old age. Death itself does not efface it, except when decomposition has set in. It has been observed on the fingers of Egyptian mummies and on the paws of stuffed monkeys. With the exceptions perhaps of very deep scars and clearly-made tattoo marks, there are probably no bodily characteristics so persistent and so distinctive as these. I have spoken of the impression taken from a single finger of one hand; but take them from the five fingers of one hand or the ten fingers of the two hands, and you are identified beyond the possibility of denial or disproof. Such is the tell-tale finger-print.

A few years ago a very curious criminal case was before the Bengal Courts. The manager of a tea garden in a little place on the Bhutan frontier was found dead in his bed, his throat cut and his safe rifled. Several persons were suspected—a coolie, the manager's cook, an ex-servant whom he had caused to be imprisoned for theft, and others; but the evidence given at a preliminary inquiry incriminated nobody. Among the papers discovered and examined in a dispatch-box of the manager was a calendar in book form, printed in the Bengali character. The calendar had a cover or wrapper of light blue paper, on which were observed two dirty-looking, faint, brownish smudges. Upon these a magnifying glass was brought to bear, and one of the smudges was deciphered as a half-impression of the fingers of somebody's right hand. The Central Office of the Bengal Police keeps in a classified register the finger prints of all persons convicted of certain offenses; and the impression recorded on the calendar happened to correspond precisely with the impression of the thumb of the right hand of one Kangali Charan, the manager's ex-servant. This man was arrested in a district some hundreds of miles away, and brought to Calcutta, where the impression of his right thumb was again taken. The chemical examiner to the government meanwhile certified that the stain on the cover of the calendar was human blood, and Kangali Charan was committed for trial. In the end he was

convicted of having stolen the missing property of the deceased, the assessors holding that it would be improper to find him guilty of murder, as no one had witnessed the deed. On appeal the conviction was upheld by the judges of the Supreme Court.—*The Law Times.*

ACTIONS FOUNDED ON FELONIOUS ACTS.

It was long a vexed question in English law as to how far the rights of a party injured by the wrongful act of another were affected by the circumstances of such wrongful act, amounting also to a felony. The legal position of the parties is today clearly defined, but three centuries of contradictory and perplexing authority were involved before this late attainment to the dignity of settled rule. Many of the earliest cases laid down the principle that no cause or action at all could arise out of a felony, the private injury, it was said, merging in the public wrong. This view was modified later by making prosecution a condition precedent to civil recourse. It was left to Mr. Justice Blackburn to throw the first shade of doubt on what had long been regarded as settled law. In the case of Wells v. Abrahams (1872), L. R. 7 Q. B. 554, his lordship suggested that there was no suspension of or defense to an action arising out of a felonious act, but that the court, of its own motion, or on the suggestion of the crown, should stay proceedings until public justice had been satisfied. This view of Mr. Justice Blackburn, that prosecution was not a condition precedent, but merely a reason why civil proceedings should be stayed, was accepted as correct by the court in *Ex parte* Ball, *in re* Shepherd, 10 C. D. 667. In that case Baggallay, L. J., laid down the following propositions as affirmed by the authorities: 1. That a felonious act may give rise to a maintainable action. 2. That the cause of action arises upon the commission of the offense. 3. That, notwithstanding the existence of the cause of action, the policy of the law will not allow the person injured to seek civil redress if he has failed in his duty of bringing, or endeavoring to bring the offender to justice. 4. That this rule has no application to cases in which the offender has been brought to justice at the instance of some other person injured by a similar offense, as in Marsh v. Keating, 1 Bing. (N. Car.) 198, in which prosecution is impossible by reason of the death of the offender, or of his escape from the jurisdiction before a prosecution could have been commenced by the exercise of reasonable diligence. These resolutions were adopted in the later case of Midland Insurance Co. v. Smith (1881), 6 Q. B. D. 561, by Mr. Justice Watkin Williams in an elaborate and interesting judgment, in which he reviews the authorities on the subject.

Having found the rule we have now to consider in what way a defendant may claim its benefit. The mode of relief was what troubled Lord Justice Bramwell in *Ex parte* Ball, for while somewhat dubiously assenting to the main proposition of the necessity of prior prosecution, he asks, "How is the crown to know of it? Is it left to the court to find it out on the pleadings? If it appears on the trial, is the judge to discharge the jury?" We think, however, that the authorities clearly show that the proper way to raise the objection is by a summary application to the court to have the action stayed till the criminal issue has been determined. Blackburn, J., suggests this in Wells v. Abrahams, and in Roope v. D'Arigda (1883), 10 Q. B. D. 412. Cave, J., adopted that view. "The observations of the Lord Justices," who decided *Ex parte* Ball lead me to conclude," he remarks, "that the majority of the court thought there was a cause of action, although there had been no prosecution, and that if there was any mode of staying the action it must be by some application made summarily to the court and not by demurrer." Again in Appleby v. Franklin, 17 Q. B. D. 93, per Wills, J., "it is equally clear that the objection to the maintenance of the action cannot be raised by plea or demurrer, or, as it would seem by way of non-suit, as the cause of action still exists."

In the older case of *Ex parte* Elliott (1837), 2 Deacon, Sir George Rose says in his judgment, "it is true that judges sitting in civil tribunals to adjudicate on rights between man and man are not to decide that the case before them amounts to a felony, but they may ask themselves this question—does the state of circumstances brought before them induce them to conclude that a jury would convict?" An anonymous case reported in 16 Cox, C. C., 566, lays it down that the court itself will not interfere summarily in the absence of an application for the purpose by either party. In that case, which was decided by the Irish Court of Appeal in 1889, Holmes, J., thought the court might interfere summarily in cases where the criminal proceedings were actually pending, but not in any other. O'Brien, J., in dissenting to the judgment of the court, made some weighty observations. "I entertain," he said, "an opinion that where the court from information before it sees that acts of a grave criminal nature are charged against a party in a civil action, they will, in view of the enormous importance of the matter to the administration of justice, restrain the proceedings till the criminal matter is disposed of. And in my opinion it arises from the very nature of the action of the court, and from the necessity of the case, because the defendant may have very strong interest not to stir in the matter, and the crown of course does not appear, that the court will exercise that authority of their own motion, and independent of any application from any party."

These remarks of the learned justice are extremely pertinent. The civil action is stayed on grounds of public policy, for the law will not allow a man to reap a benefit at the sacrifice of his duty to the community. The court is the administrator of the law, and as such is the guardian of the public to safeguard its rights; why should it not be competent of its own initiative to stay actions which on their face reveal a dereliction of some public duty? The court has assumed this role in cases where illegal agreements have come under its consideration, and we do not altogether appreciate its inability here. To this question the case of Whitmore v. Farley, 29 W. R. 25, is relevant. However, the majority of the court were against O'Brien, J., so that we must assume the law as settled on the point.

A distinction has been drawn by some judges between felonies affecting life which were said to merge the private wrong, and inferior felonies which merely suspended it. This distinction, however, was emphatically condemned by Lord Justice Bramwell, in Osborne v. Gillett, L. R. 8 Ex. 98. It is well to remember that our rule only applies to cases where the party injured by the felonious act has resulted in consequential damage to a stranger. Appleby v. Franklin, *supra*. Again, in cases where the wrongdoer becomes insolvent, the injured party, who has failed to prosecute, will not be allowed to prove

against the estate until he has done his duty. In *Ex parte* Ball, *supra*, Lord Justice Baggallay extended the bar to the trustee in bankruptcy of the wronged party, but the majority of the court was against him in this, holding that the trustee represented not the injured party, but the creditors of the estate, and that there was consequently no duty cast on the trustees to prosecute.

The last point which we propose to consider is the question whether the rule of law which we have been discussing applies to all acts of a criminal nature, or must be relegated to cases of felony alone. We notice first of all that nearly all the authorities, the older ones especially, are concerned with pure felonies. Is there any reason why all misdemeanors should be obnoxious to the rule? We confess to seeing no distinction that can properly be drawn on principle between certain classes of misdemeanors and felonies. There is, however, direct authority on the point, namely, Fissington v. Hutchinson (1866), 15 L. T. 390. This was an action for damages before a jury, the declaration alleging that the defendant had indecently assaulted the plaintiff. Martin, B., was of opinion that there was no evidence to go to a jury, and that it was a case for his decision. He had never heard of such an action being brought before. The Lord Chief Baron had expressed an opinion (unreported) that as the declaration alleged on the face of it that a criminal offense had been committted, the action raised could not be maintained. That opinion, however, hardly coincided with his own, which was that although an action was not maintainable where a case of felony was alleged it was maintainable where the charge amounted only to a misdemeanor.

I do not think we should treat this case of Fissington v. Hutchinson as a binding authority, as in addition to being merely a case at *nisi prius*, the learned baron lays down a proposition of law which is entirely fallacious, namely, that an action is not maintainable where a felony is alleged. This in itself is sufficient to discredit the entire case as a sound authority. We submit that the rule is broad enough to cover all criminal offenses of whatsoever nature which strike at the public weal. The language of Lord Halsbury in Vernon v. Watson (1891), 2 Q. B. 290, although only *obiter dictum*, seems to bear this out. "The old principle of law," he calls it, "founded upon public policy and expediency, that where a claim is founded upon a matter which might be the subject of criminal proceedings, the person seeking to enforce it must prosecute for the offense before he can sue in a civil action." We are inclined to think that a very proper analogy may be drawn between our rule and that relating to the compounding of criminal offenses, as both depend on the same great principle of public policy. In regard to the latter rule it was laid down in Elworthy v. Bird, 2 Simon and Stuart, 372, that a compromise of a felony is not permissible, but that a misdemeanor may be compounded. The distinction was taken in argument there that the law against compounding offenses related only to felonies and public misdemeanors, and not to cases of private misdemeanors, and this view was evidently adopted by the vice-chancellor in his judgment as the correct one. In Keir v. Leman, 6 Q. B. 308, followed in Windhill Local Board v. Vint, 45 C. D. 351, it was held that the law permitted the compromise of offenses which were criminal and for which the injured party might also sue and recover damages in a civil action, but that no agreement could be valid which was founded upon the consideration of stifling an offense of a public nature.

So apparently the true test in these cases is whether the wrongful act amounts to a public injury. Reasoning, therefore, by parity, we would come to this conclusion, in regard to the point we have been discussing, that the court will stay all civil proceedings arising out of acts which may amount to felonies or to misdemeanors of a public nature until the plaintiff (or some one else) has first satisfied the duty to the community, which is paramount in such cases, by prosecution of the offender. Further, that in cases of petty misdemeanors which may be the subject of civil proceedings, or in offenses of a quasi criminal nature, such duty does not arise, and failure to prosecute will be no bar to civil action.—*The Summons.*

BOOK REVIEWS.

FEDERAL STATUTES, ANNOTATED, VOL. 3.

The third volume of that most excellent compilation and annotation of the United States statutes, entitled "Federal Statutes, Annotated," has just reached our desk. This volume not only continues to evidence the same excellences to which attention was called in a former review of the first two volumes, but emphasizes especially the value of the annotation features of this great undertaking. For instance, the subject of Evidence, with which this volume opens, codifies all the laws of the United States on this subject and accompanies the codification with an annotation that is particularly valuable. The principal feature of this annotation is its exhaustiveness and accessibility. Thus, each of those important sections of the federal statutes relating to depositions *de bene esse* are set out separately with appropriate captions. Under each section in smaller type and double columns, are the annotations, which are again freely subdivided with black letter captions, so that a lawyer desiring to find the construction of a section of the act providing for such depositions is enabled quite readily to turn to the proper section and even more readily sift out from the annotations the particular point of construction that interests him. These points of usefulness, however, are not confined to the subject of "Evidence," but are maintained throughout the volume, which contains among other subjects those of "Extradition," "Fines and Penalties," "Food and Drugs," "Habeas Corpus," Hawaiian Islands," "Health and Quarantine," "Homicide," "Immigration," "Imports and Exports," "Indians" and "Interstate Commerce."

A careful and critical review of the volumes to date leads us to say that they will fill a most useful place in the library of any lawyer and constitute a labor-saving device for lawyers, of such great value that a lawyer who is in any way pressed for time would lose more money by denying himself the expense of this set of books than by expending the comparatively small amount necessary to obtain them.

Published by Edward Thompson Company, Northport, New York.

BOOKS RECEIVED.

A Treatise on Damages, covering the Entire Law of Damages both Generally and Specifically. By Joseph A. Joyce, author of "Joyce on Insurance" and joint author of "Joyce on Electric Law." Vol-

ume 3. The Banks Law Publishing Company, 21 Murray Street, New York, 1904. Sheep, price $6.00.

The American Digest, Annotated, continuing without omission or duplication the Century Edition of the American Digest, 1658 to 1896. 1903B. A Digest of all Current Decisions of all the American Courts, as Reported in the National Reporter System, the Official Reports, and elsewhere, together with leading English and Canadian Cases, from April 1, 1903, to September 30, 1903. Prepared and Edited by the Editorial Staff of the American Digest System. St. Paul, Minn. West Publishing Co., 1904. Review will follow.

Brief upon the Pleadings in Civil Actions, at Law, in Equity, and under the New Procedure. By Austin Abbott of the New York Bar. Second and Enlarged Edition by the Publishers' Editorial Staff. In two volumes. The Lawyers' Co-operative Publishing Company, Rochester, N. Y., 1904. Price $4.50 each. Review will follow.

HUMOR OF THE LAW.

They say there is a certain German justice of the peace who invariably gives judgment for the plaintiff in civil suits before him, without hearing the defendant, silencing that unfortunate litigant with, "Vell, vot I tinks he sue you for if you don'd owe him?"

The court called for *Ex parte* applications first. A barrister (of Irish extraction) arose and made a motion, to which, when he sat down, another proceeded to show cause. The court was astonished. "I thought you said it was an *Ex parte* application." "Yes, me lard; it is ex parte in the sinse that there's no rale answer to it."

A Texas lawyer was defending a colored kleptomaniac on the plea of insanity. He made an eloquent speech on the irresponsible condition of his client's mind, to the jury, and took his seat. His idiot client reached over, touched his arm, and said emphatically: "You is de biggest fool in dis town." The opposing attorney remarked: "There, I told you he had lucid intervals!"

A member of the Lynchburg (Va.) Bar, appealing to the court for the discharge of his client, wound up with the statement that if the court held him for another trial, a stain would be left on his character which could not be washed off by all the soap which could be manufactured from the "ponderous carcass of the commonwealth's attorney." To this the latter replied that he "desired to advise the court, if they thought it proper to boil his body into soap, they should look to the opposite counsel for the concentrated lye out of which to make it."

"I presume, my good fellow, you're a laborer?" said allawyer to a plainly dressed witness.

"You are right. I am a workingman, sir," replied the witness who was a civil engineer.

"Familar with the use of the pick, shovel and spade, I presume."

"To some extent. These are not the principal implements of my trade, though."

"Perhaps you will condescend to enlighten me as to your principal implements."

"It is hardly worth while. You don't understand their nature or use."

"Probably not (loftily), but I insist on knowing what they are."

"Brains."

A literary man was once arraigned in a Chicago police court on a charge of vagrancy.

"I understand," said the magistrate, "that you were found sleeping on a doorstep, and you have no visible means of support, and that you have been seen under the influence of liquor."

"What of it?" said the prisoner. "Though I am as poor as Richard Savage when he made his bed in the ashes of a glass factory, as drunken as Dick Steele, and as ragged as Goldsmith when he was on a fiddling tour, as dirty as Sam Johnson, as—"

"That's enough!" cried the magistrate, impatiently. "I have no doubt your associates are a disreputable lot, and I will deal with all of you in such manner as to make you give this town a wide berth. Seven days with hard labor. Mr. Clerk, furnish the officer with the names of the other tramps mentioned by the prisoner."

The well-known legal expression, "no more chance than a cat without claws would have in hell," was originated in Illinois. The author was Emory Storrs. Mr. Storrs was addressing the jury in a celebrated case. Opposing counsel had said in closing his address: "My learned friend who will follow me will undertake to make you believe that my client has no chance in this case. I warn you against his sophistry."

Storrs arose and made one of the shortest speeches ever made to a jury. He said:

"May it please the court, and you, gentlemen of the jury, the plaintiff in this case has no more chance than a cat without claws would have in hell."

And then he sat down. The jury returned in less than ten minutes. The judge, who was a good deal of a wit and consequently liked a joke, asked, when the jury came in: "Gentlemen, have you agreed upon a verdict?"

The foreman replied, "We have, your honor."

"Has the plaintiff any chance?" asked the court.

In a moment the court room was in a roar and the bailiff was splitting the desk with his gavel. The judge, however, made no correction in his inquiry, and the clerk's entry in this case stands today as he wrote it:

"The jury finds in this case that the plaintiff had no more chance than a cat without claws would have in hell."—*The Green Bag.*

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. ABATEMENT AND REVIVAL—Death of One of Two Plaintiffs.—In an action for trespass by two plaintiffs, in which one died pending the action, his devisee cannot be made a party and recover in his stead, but his administrator must be joined.—Rowe v. Cape Fear Lumber Co., N. Car., 45 S. E. Rep. 830.

2. ACCIDENT INSURANCE—Foreign Insurance Companies.—A foreign accident insurance company is not required to comply with Code 1899 ch. 34, § 2, requiring insurance companies to obtain a certificate from the state auditor before doing business in the state, but obtains its certificate from the secretary of state, under Code 1899, ch. 54, § 30.—Virginia Accident Ins. Co. v. Dawson, W. Va., 46 S. E. Rep. 51.

3. ACCIDENT INSURANCE—Proceeds of Policy.—Where insured directed insurer to pay the money due under a policy to plaintiff, but died before the beneficiary in the policy was changed to plaintiff, plaintiff was not entitled to recover under the policy.—O'Brien v. Continental Casualty Co., Mass., 69 N. E. Rep. 308.

4. ACKNOWLEDGMENT—Justice of the Peace.—Where plaintiff executed a deed to a third person and accepted a mortgage from defendant to secure the price, the plaintiff, a justice of the peace, held competent to aeknowledge a transfer by such third person of his deed to defendant.—Joines v. Johnson, N. Car., 45 S. E. Rep. 828.

5. ADVERSE POSSESSION—Exclusive and Continuous Occupation.—A grant of lands may be presumed from acts of exclusive and continuous occupation for 10 years with a claim of ownership.—Flanagan v. Methieson, Neb., 97 N. W. Rep. 287.

6. ADVERSE POSSESSION— Executory Contract.—Possession of vendee under an executory contract for the purchase of land is not adverse to the vendor, so long as the purchase money is not paid or a deed demanded.—Johnson v. Peterson, Minn., 97 N. W. Rep. 384.

7. ANIMALS—Pasturing Cattle.—Under a contract to take cattle to run on plaintiff's range, held, that he was entitled to $1 per head for all he turned back, though some could not be found.—Miller v. Lewis, S. Dak., 97 N. W. Rep. 364.

8. APPEAL AND ERROR—Action Against Carriers and Car Company.—A railroad company sued jointly with the Pullman Car Company for death of a passenger, held not entitled to complain that verdict was directed for the car company.—Robinson v. Chicago & A. R. Co., Mich., 97 N. W. Rep. 689.

9. APPEAL AND ERROR—Divided Court.—Where the justices are equally divided in opinion, the judgment stands affirmed by operation of law.—Central of Georgia Ry. Co. v. Wallace, Ga., 46 S. E. Rep. 87.

10. APPEAL AND ERROR—Judgment Appearing for Right Party Does not Cure Errors.—An error committed during the progress of a trial held not cured by the principle that, if a judgment appears to be for the right party, it will be affirmed, notwithstanding errors.—Stony Creek Lumber Co. v. Fields & Co., Va., 45 S. E. Rep. 797.

11. APPEAL AND ERROR—Motion to Re-Tax Costs.—An order retaxing costs cannot be reviewed, when the affidavits supporting and resisting the motion are not in the bill of exception.—Van Buskirk v. Balch, Colo., 74 Pac. Rep. 792.

12. APPEAL AND ERROR—Partnership Accounting.—Supreme court will render a final decree on partnership accounting, and not remand on ground of newly discovered evidence, where such evidence was merely cumulative and the issue was determined by a preponderance of evidence.—Rowan v. Lamb, Miss., 35 So. Rep. 427.

13. APPEAL AND ERROR—Stay of Proceedings Waived by Acceptance of Notice of Appeal.—A party, entitled to a stay of proceedings for the nonpayment of costs, waives the stay by receiving from the opposite party the notices of appeal, printed papers, and notice of argument.—Allen v. Becket, 85 N. Y. Supp. 192.

14. APPEAL AND ERROR—Theory of Case.—The supreme court will dispose of a case on the theory on which it was tried below.—Parker v. Knights Templars' & Masons' Life Indemnity Co., Neb., 97 N. W. Rep. 281.

15. ARREST—Second Arrest of Person on Bail.—A person arrested for removal to another district to answer to a criminal charge, and admitted to bail pending his examination before a commissioner, is not subject to arrest a second time for removal to a different district until the first proceeding has been terminated.—*In re* Beavers, U. S. D. C., S. D. N. Y., 125 Fed. Rep. 988.

16. ASSAULT AND BATTERY—Ejecting Passenger.—Passenger on a street car, expelled by conductor, using more force than necessary, held entitled to damages for assault in action against carrier.—Ickenroth v. St. Louis Transit Co., Mo., 77 S. W. Rep. 162.

17. ASSIGNMENTS—Liability of Sheriff in Bond.—That an assignor for benefit of creditors requests a sheriff, acting as assignee, to withhold a deed from record beyond the statutory time, is no excuse for the neglect of such sheriff.—Huddleson v. Polk, Neb., 97 N. W. Rep. 624.

18. ASSIGNMENTS—Right of Attorney to Prosecute Appeal:—An attorney, to whom claims are unconditionally assigned, may prosecute an appeal in his own name for a recovery on such claims, without joining the original claimants.—Huddleson v. Polk, Neb., 97 N. W. Rep. 624.

19. ASSIGNMENTS — Wagers in the Hands of Stakeholder.—Parol assignment of a claim, under 1 Rev. St. (1st Ed.) p. 662, part 1, ch. 20, tit. 8, § 8 (Birdseye's Rev. St. [3d Ed.] pp. 299, 300, § 5), providing for the recovery of wagers in the hands of a stakeholder, held valid.—Bernstein v. Horth, 85 N. Y. Supp. 263.

20. ASSIGNMENTS FOR BENEFIT OF CREDITORS—Rights of Creditors Before and After Assignment. — A creditor secured by a deed of trust held entitled to payment, as against a creditor whose claim arose subsequent to the recording of the deed.—Sutton v. Bessent, N. Car., 45 S. E. Rep. 844.

21. ASSIGNMENTS FOR BENEFIT OF CREDITORS — Taxing Costs.—Costs of an accounting by the assignee for creditors, including referee's and stenographer's fees and allowance to the assignee, will be taxed by the court in the first instance, where all parties had notice of the action and there was no dispute. — *In re* Oakley, 85 N. Y. Supp. 227.

22. ATTORNEY AND CLIENT—Purchase in Good Faith.—Attorney must prove utmost good faith in his purchase of property about which he is consulted by his client.—Young v. Murphy, Wis., 97 N. W. Rep. 496.

23. ATTORNEY AND CLIENT — Termination of Employment.—In the absence of stipulation showing a different intent, an employment of an attorney to procure a claim terminates with the judgment thereto and the execution of the usual process on the judgment.—Lamb v. Wilson, Neb., 97 N. W. Rep. 325.

24. BANKRUPTCY—Denial that Petitioners are Creditors.—Under Bankr. Act, July 1, 1898, ch. 541, §§ 18d, 19a, 30 Stat. 551 [U. S. Comp. St. 1901, p. 3429] one petitioned against as an involuntary bankrupt held not entitled to a jury trial on issue as to character of petitioners as creditors, notwithstanding section 19c.—Morss v. Franklin Coal Co., U. S. D. C., M. D. Pa., 125 Fed. Rep. 998.

25. BANKRUPTCY—Exemptions.—Costs and expenses of a referee and receiver in bankruptcy held not entitled to priority of payment from the proceeds of the sale of the bankrupt's assets, which were insufficient to satisfy the bankrupt's exemptions.—*In re* Le Vay, U. S. D. C., M. D. Pa., 125 Fed. Rep. 990.

26. BANKRUPTCY—Following Trust Funds.—Beneficiary of trustee may recover from trustee in bankruptcy of trustee of funds moneys recovered by him in action to annul fraudulent conveyance.—Welch v. Polley, N. Y., 69 N. E. Rep. 279.

27. BANKRUPTCY—Homestead.—A court of bankruptcy is without power to order the sale of a bankrupt's homestead, exempt from his general debts under the laws of the state, because a particular creditor may have the right to subject it to his debt.—Ingram v. Wilson, U. S. C. C. of App., Eighth Circuit, 125 Fed. Rep. 913.

28. BANKRUPTCY—New Promise as a Discharge.—In an action on an account, plaintiff, to avoid the effect of a discharge in bankruptcy, must show the new promise was made after the discharge and before the suit—Thornton v. Nichols & Lemon, Ga., 45 S. E. Rep. 785.

29. BANKRUPTCY—Preferences.—Transaction within four months of bankruptcy held to amount to preference, and not a mere substitution of securities, and therefore to constitute an act of bankruptcy.—Anniston Iron & Supply Co. v. Anniston Rolling Mill Co., U. S. D. C., N. D. Ala., 125 Fed. Rep. 974.

30. BANKRUPTCY—Preferences.—In an action by a trustee in bankruptcy to recover proceeds of bankrupt's property paid over to a creditor within four months of petition in bankruptcy, it must be alleged that the creditor received the preference with reasonable cause to believe the bankrupt was insolvent.—Johnson v. Anderson, Neb., 97 N. W. Rep. 389.

31. BANKRUPTCY—Right of Trustee to Sue.—The right of a trustee in bankruptcy to sue in behalf of the estate is an incident to his office.—McLanahan & Alford v. Blackwell, Ga., 45 S. E. Rep. 785.

32. BANKRUPTCY—Withdrawal of Funds After Filing Petition.—Where, after the filing of a bankruptcy petition, the bankrupt withdrew from a bank deposit standing in his name as "manager" a certain sum, which he applied to his private purposes, he will be required to refund the sum so withdrawn to his trustee.—*In re* Kurtz, U. S. D. C., E. D. Pa., 125 Fed. Rep. 992.

33. BANKS AND BANKING—Deposits.—When a bank book is returned from the bank with canceled deposits, it is in compliance with the demand on the part of the depositor to know what the bank claims as a statement of his account, and a return of the book with the vouchers is an answer to that demand.—Scanlon-Gipson Lumber Co. v. Germania Bank, Minn., 97 N. W Rep. 880.

34. BANKS AND BANKING—Deposit of Trust Funds.—Bank accepting deposit of trust fund held liable to true owner, where he sustains loss thereof by act of bank—Interstate Nat. Bank v. Claxton, Tex., 77 S. W. Rep. 44.

35. BANKS AND BANKING—Paying Overdrafts.—A bank cashier, in paying an overdraft in accordance with a custom of the bank, held bound only to exercise due care to ascertain the customer's financial standing.—First Nat. Bank v. Reese, Ky., 76 S. W. Rep. 384.

36. BENEFIT SOCIETIES—Deposit to Cover Assessment.—Where a financier of a lodge has accepted money from a member to cover anticipated assessments, a forfeiture cannot be predicated on failure of the member personally to tender the assessments.—Grand Lodge A. O. U. W. v. Scott, Neb., 97 N. W. Rep. 637.

37. BENEFIT SOCIETIES—Forfeiture of Membership.—Constitution of a beneficial association, providing that no person who engages in the sale of intoxicating drinks can be admitted or retained as a member, held not self-executing.—Steinert v. United Brotherhood of Carpenters & Joiners of America, Minn., 97 N. W. Rep. 668.

38. BENEFIT SOCIETIES—Payment of Dues.—The presumption of payment of dues to a benefit life association held to arise from delivery of a policy reciting that it was issued in consideration of payment of such dues on delivery thereof.—Taylor v. Supreme Lodge of Columbian League, Mich., 97 N. W. Rep. 680.

39. BILLS AND NOTES—Acceptance of Renewal Note.—Acceptance of renewal note and surrender of the original held a payment of the original.—Citizens' Commercial & Savings Bank v. Platt, Mich., 97 N. W. Rep. 694.

40. BILLS AND NOTES—Counter Claim Based on Fraud.—In an action on a note, where the answer sets up a counterclaim based on fraud, defendant must prove that plaintiff's representations were false and that he knew it.—Halliwell Cement Co. v. Stewart, Mo., 77 S. W. Rep. 124.

41. BOUNDARIES—Establishment.—Owners of land, agreeing to the establishment of a boundary line, acquiescing therein, and changing their relative rights accordingly, are bound thereby.—Brown v. Bowerman, Mich., 97 N. W. Rep. 352.

42. BOUNDARIES—Half Section Line.—In locating a road along a half-section line, a line of division fence to which each party had occupied and maintained possession for more than 10 years was rightly adopted as the half-section line.—Nance Co. v. Russell, Neb., 97 N. W. Rep. 320.

43. BOUNDARIES—Swamps.—Where a call of a deed terminates at a certain swamp, the question whether the edge or run of the swamp is meant is for the jury.—Rowe v. Cape Fear Lumber Co., N. Car., 45 S. E. Rep. 830.

44. BUILDING AND LOAN ASSOCIATIONS—Premiums for Loans.—A minimum premium fixed by a building and loan association for a loan to any member is usurious—Kittredge v. Chillicothe Loan & Building Ass'n, Mo., 77 S. W. Rep. 147.

45. CARRIERS—Contract of Shipment.—Where a traveling freight agent of a common carrier, with authority to solicit freight business, contracts without disclosing conditions limiting his authority, the principal is bound by his act.—Baker & Penniston v. Chicago Great Western Ry. Co., Minn., 97 N. W. Rep. 650.

46. CARRIERS—Defective Vestibule Door.—A railroad company held bound to furnish a passenger safe passage through the Pullman cars to its dining car.—Robinson v. Chicago & A. R. Co., Mich., 97 N. W. Rep. 689.

47. CARRIERS—Failure to Stop.—A railway company held liable for failing to stop at a flag station, when the engineer and fireman saw and understood the signal to stop.—Southern Ry. Co. v. Lanning, Miss., 35 So. Rep. 417.

48. CARRIERS—Injury by Derailment of Car.—Where a street car passenger shows that he was free from negligence, and that he was injured by the derailment of a car the company has the burden to show its freedom from negligence.—Heyde v. St. Louis Transit Co., Mo., 77 S. W. Rep. 127.

49. CARRIERS—Injury to Live Stock.—Shipper cannot recover for damages to cattle resulting from shrinkage caused by his putting the cattle in the carrier's pen before the time agreed upon for their departure.—International & G. N. R. Co. v. Earnest & Bost, Tex., 77 S. W. Rep. 29.

50. CARRIERS—Passenger Riding in Dangerous Position.—A street car company, assuming to carry a passenger in a dangerous position, held required to observe the requisite degree of care for his safety.—Parks v. St. Louis & S. Ry. Co., Mo., 77 S. W. Rep. 70.

51. CARRIERS—Running Past Crossing.—Running past a street crossing is not the proximate cause of injury to

a street car passenger, hurt in an attempt to alight.—Lynch v. St. Louis Transit Co., Mo., 77 S. W. Rep. 100.

52. CARRIERS—Time Allowed for Alighting.—Where a passenger on a street car has a young girl with her, extra time should be allowed her in alighting.—Hannon v. St. Louis Transit Co., Mo., 77 S. W. Rep. 158.

53. CARRIERS—What Constitutes Passenger.—Person crossing railroad track with intention of boarding a rain and paying his fare thereon held a passenger.—Albin v. Chicago, R. I. & P. Ry. Co., Mo., 77 S. W. Rep. 153.

54. CARRIERS—Wrongful Ejectment.—Passenger, suing for wrongful ejection, held not entitled to complain of refusal to instruct that he should recover his unused fare at all events.—Gallegly v. Kansas City, M. & B. R. Co., Miss., 35 So. Rep. 420.

55. CHAMPERTY AND MAINTENANCE—Contract for Services —A contract for attorney's services, to be paid by a percentage of the recovery only, held void for champerty.—Gargano v. Pope, Mass., 69 N. E. Rep. 343.

56. CIVIL RIGHTS—Negroes on Jury List.—In a criminal prosecution of a negro, the mere fact that the jury commissioners did not draw any negroes on the list does not show that the negro race was discriminated against.—Carter v. State, Tex., 76 S. W. Rep. 437.

57. COMMERCE—Right of Corporation in Foreign State. —Rev. St. 1899, §§ 1025, 1026, requiring foreign corporations to file with the secretary of state a copy of their charter and certain other statements, and obtain a certificate authorizing them to do business in the state, etc., is not a regulation of interstate commerce.—Fay Fruit Co. v. McKinney, Mo., 77 S. W. Rep. 160.

58. CONSTITUTIONAL LAW—Construction of Usury Statute.—Usury statutes do not affect the obligation of the contract, but pertain to the remedy only, by giving to the debtor the privilege of avoiding his contract when usurious, and their repeal, without a saving clause, takes away such privilege, even as to contracts previously made.—Petterson v. Berry, U. S. C. C. of App., Ninth Circuit, 125 Fed. Rep. 902.

59. CONSTITUTIONAL LAW—Initiative and Referendum Amendment. — The initiative and referendum amendment to the constitution held not in conflict with Const. U. S. art. 4, § 4, guaranteeing to every state a republican form of government.—Kadderly v. City of Portland, Oreg., 74 Pac. Rep. 711.

60. CONSTITUTIONAL LAW—Right by Statute to Exonerate City on Contract.—Where a city contracts to purchase a heating plant, a statute removing such authority from the city held not to relieve it from liability on the contract.—City of Ludlow v. Peck-Williamson Heating & Ventilating Co., Ky., 76 S. W. Rep. 377.

61. CONSTITUTIONAL LAW—Right of State to Nullify Past Due Bonds.—Joint resolution, requiring treasurer to write off the books as obligations of the state certain past due bonds, held not a law impairing the obligation of contracts.—Smith v. Jennings, S. Car., 45 S. E. Rep. 321.

62. CONSTITUTIONAL LAW — Special Legislation. — Where a contitutional amendment has been adopted and acquiesced in 16 years, the courts will not set aside the result of the election because of irregularities and improprieties.—Weston v. Ryan, Neb., 97 N.W. Rep. 347.

63. CONSTITUTIONAL LAW—Statutory Presumption of Payment.—A statute providing the period within which a judgment shall be presumed to have been paid confers a vested right, which the Legislature cannot disturb by subsequent legislation.—Chiles v. School Dist. of Buckner, Mo., 77 So. W. Rep. 82.

64. CONSTITUTIONAL LAW—Strikes.—The constitution guarantees to every citizen liberty and a certain remedy in the laws for injuries received in person, property, or character, and a person's business or calling held property within the meaning of the law.—Gray v. Building Trades Council, Minn., 97 N. W. Rep. 663.

65. CONSTITUTIONAL LAW—Unconstitutional Statute.—An unconstitutional statute is not a law, and no moral obligation on the part of the state can be predicated thereon.—Minnesota Sugar Co. v. Iverson, Minn., 97 N. W. Rep. 454.

66. CONTRACTS—Acceptance.—The use of a boiler contracted for, which did not comply with the contract, after it had been connected with defendant's factory, held not to show an acceptance thoreof.—Manitowoc Steam Boiler Works v. Manitowoc Glue Co., Wis., 97 N. W. Rep. 515.

67. CONTRACTS—Immateriality of Condition Precedent —The immateriality of a condition precedent made by agreement of the parties, and the harmlessness of a failure to perform, does not mitigate the fatal effect of a breach of such condition.—National Surety Co. v. Long, U. S. C. C. of App., Eighth Circuit, 125 Fed. Rep. 887.

68. CONTRACTS—Not to Build Railroad Station.—Public policy precludes a decree for specific performance of a covenant in a deed of a right of way not to build a depot within three miles of the one therein stipulated.—Beasley v. Texas & P. Ry. Co., U. S. S. C., 24 Sup. Ct. Rep. 164.

69. COPYRIGHT—Song Rendered in Mimicry of Actress. —Imitation by one actress of the manner in which another actress rendered a copyrighted song, in which the chorus of the song was used only as a vehicle for the mimicry, held not prohibited by Rev. St. § 4966, as amended in 1897, U. S. Comp. St. 1901, p. 3415.—Bloom & Hamlin v. Nixon, U. S. C. C., E. D. Pa., 125 Fed. Rep. 977.

70. CORPORATIONS—Appointment of Receiver.—Save in certain suits in equity, the jurisdiction in equity does not warrant appointment of a receiver to take charge of the business of a corporation, where that is the main object of the suit.—Vila v. Grand Island Electric Light, Ice & Cold Storage Co., Neb., 97 N. W. Rep. 613.

71. CORPORATIONS—Proceedings Against Stockholders. —A judgment creditor of a corporation, in a proceeding against a stockholder under the Kansas statute, is not precluded by the judgment from showing the date when the several demands entering into it accrued, to meet the defense of limitation pleaded by the stockholder.—Crissey v. Morrill, U. S. C. C. of App., Eighth Circuit, 125 Fed. Rep. 878.

72. CORPORATIONS—When Creditor is Entitled to Receiver.—A creditor of a corporation held entitled to the appointment of a receiver, before reducing his claim to judgment, where, in the absence of such appointment, the corporate assets will probably be fraudulently disposed of.—Kentucky Racing & Breeding Ass'n v. Galbreaith, Ky., 77 S. W. Rep. 371.

73. COURTS—Jurisdiction in Attachment of Decedent's Estate.—Where administration of estate of a resident decedent has been granted, a judgment of the district court against administrator, sustaining an attachment of the goods of the estate and directing their sale, is void for want of jurisdiction. — O'Loughlin v. Overton, Kan., 74 Pac. Rep. 604.

74. COVENANTS—Knowledge of Grantee. — In an action for breach of warranty in a deed, plaintiff's knowledge of the breach, acquired from third parties before the sale, did not deprive him of his right to recover for breach of the covenant.—Bailey v. Murphy, Colo., 74 Pac. Rep. 798.

75. COVENANTS—Light and Air.—Covenant restricting grantee's right of building on property adjoining grantor's residence held not to be continued, after removal of building, as covenant for light and air. — Deeves v. Constable, 84 N. Y. Supp. 592.

76. CRIMINAL EVIDENCE—Good Character. —The state, on cross-examination of witnesses of defendant called to prove his good character, held entitled to prove by the witnesses specific acts of misconduct. — Holloway v. State, Tex., 77 S. W. Rep. 14.

77. CRIMINAL EVIDENCE — Stenographer at Former Trial.—The stenographer who took testimony on a former trial is competent to testify as to statements made by a witness thereon.—State v. Fetterly, Wash., 74 Pac. Rep. 810.

78. CRIMINAL LAW—Approval of Statement of Facts on Appeal.—The judge may not approve the statement on appeal before the attorneys agree it is correct. — Walls v. State, Tex., 77 S. W. Rep. 8.

79. CRIMINAL LAW — Failure to Prove Offense Committed in County of Venue.—In a criminal prosecution, an objection for failure to prove that the offense was committed in the county in which the venue is laid can not be first raised on appeal. State v. Holder, N. Car., 45 S. E. Rep. 862.

80. CRIMINAL LAW—Proper Statement of Belief in Complaint.—Complaint which fails to state that affiant believes an offense to have been committed held insufficient.—Justice v. State, Tex., 76 S. W. Rep. 437.

81. CRIMINAL TRIAL—Homicide. — Where there is no doubt as to the degree of the crime of which the person on trial is guilty, if guilty at all, and no evidence to justify a verdict of any less degree than charged in the indictment, the court may instruct the jury to either convict of the crime charged or acquit. — State v. Nelson, Minn., 97 N. W. Rep. 652.

82. CRIMINAL TRIAL—What Constitutes Grounds for New Trial.—New trials in criminal cases should be granted only where the substantial rights of an accused have been so violated as to make it reasonably clear that a fair trial was not had.—State v. Nelson, Minn., 97 N. W. Rep. 652.

83. CUSTOMS AND USAGES — Presumption of Fact for Jury.—The presumption raised by evidence of a custom that both parties knew of and contracted with relation to it held one of fact for the jury. — A. J. Tower Co. v. Southern Pac. Co., Mass., 69 N. E. Rep. 348

84. DAMAGES—Pain and Anguish. — In an action for personal injuries, instruction on the measure of damages, authorizing recovery for pain and anguish which might be suffered, held erroneous.—Albin v. Chicago, R. I. & P. Ry. Co., Mo., 77 S. W. Rep. 153.

85. DEDICATION—Question of Fact for Jury. — Where the facts are undisputed, the questions of dedication and acceptance of a public street are ones of law; but, where intent to dedicate is to be drawn as an inference of fact from the evidence, it is for the jury. — German Bank of Evansville v. Brose, Ind., 69 N. E. Rep. 300.

86. DEEDS—Subsequent Control of Trust by Settlor.—Settlor of a trust could not afterwards defeat vested estates of *cestuis que trustent*.—Ottomeyer v. Pritchett, Mo., 77 S. W. Rep. 62.

87. DESCENT AND DISTRIBUTION — Collateral Representation —Under Code 1892, § 1543, held, that where one died leaving aunts and uncles, and descendants of aunts who had died in his lifetime, the surviving uncles and aunts took to the exclusion of the cousins.—Grantham v. Statham, Miss., 35 So. Rep. 423.

88. DESCENT AND DISTRIBUTION — Laches of Child in Failing to Assert Claim Against Father Holding Land by Curtesy.—Where a husband, who holds realty as trustee for his wife, continues to occupy it after her death as tenant by the curtesy, the claim of their child as heir of the mother does not become stale. — Williams v. Williams' Ex'r, Ky., 76 S. W. Rep. 413.

89. DISCOVERY — Promise to be Present at Trial.—Plaintiff's right to examine defendant before trial held not affected by defendant's statement that he intended to be present at the trial.—Tanenbaum v. Lippmann, 85 N. Y. Supp. 122.

90. DIVORCE—Separate Maintenance.—In divorce proceedings by husband against his wife, it is not error to allow defendant attorney's fees and money for her support pending litigation.—Baier v. Baier, Minn., 97 N. W. Rep. 671.

91. EASEMENTS—Thirty Years Use of a Passageway.—Where a land owner and his vendors for 30 years have continuously used a passway to a turnpike, the owner of the servient estate may be restrained from interfering with its use.—Anderson v. Southworth, Ky., 76 S. W Rep. 391.

92. EMINENT DOMAIN—Assessment of Compensation.—The rule as to ascertaining the sum to be awarded for land taken for a public purpose stated, with reference to its value for a special purpose to which it is adapted.—Conness v. Commonwealth, Mass., 69 N. E. Rep. 341.

93. EMINENT DOMAIN—Discretion of Railroads in Selecting Lands for Condemnation.—Railway companies may decide within certain limitations what land they will condemn for their purposes, and the courts will not control their discretion, unless there has been a clear abuse of power.—Zircle v. Southern Ry. Co., Va., 45 S. E. Rep. 802.

94. EQUITY—Parol Testimony.—The rule in equity that depositions alone shall be used in the trial of suits in equity does not apply to cases tried by a jury under Code 1892, §§ 507, 555.—White v. Jones, Miss., 35 So. Rep. 450.

95. EQUITY—When Trial by Jury Awarded.—Notwithstanding Code Civ. Proc. § 971, the court should not send the issues in an equity case to jury, unless such trial is essential.—Evans v. National Broadway Bank, 85 N. Y. Supp. 101.

96. EVIDENCE—Catalogue Showing Capacity of Plant. —In an action on an account for a heating plant, a catalogue issued by the manufacturers of the plant, showing its capacity, was hearsay and inadmissible.—Stagg & Conrad v. St. Jean, Mont., 74 Pac. Rep. 740.

97. EVIDENCE—City Ordinance.—A court cannot take judicial notice of a city ordinance.—O'Brien v. City of Woburn, Mass., 69 N. E. Rep. 350.

98. EVIDENCE — Declaration of Bystander.— Declarations of bystander after an accident held not part of *res gestæ*.—Gosa v. Southern Ry., S. Car., 45 S. E. Rep. 810.

99. EVIDENCE—Existence of a Custom.—The existence of a custom of steamship companies carrying oil clothing to stow it on deck may be shown by witnesses of long experience and observation.—A. J. Tower Co. v. Southern Pac. Co., Mass., 69 N. E. Rep. 348.

100. EVIDENCE—Parol Testimony Affecting Tax Deed.—It is not competent to show by parol proof that land was sold for the taxes of a different year from that stated in the tax deed.—Bower v. Chess & Wymand Co., Miss., 35 So. Rep. 444.

101. EVIDENCE—Private Letter.—A private letter, of which plaintiff had no knowledge, was inadmissible in evidence against him as to the purpose of a deed of his land.—Bell v. Stanske, Cal., 74 Pac. Rep. 774.

102. EXECUTION—Redemption From Prior Lien.—The holder of a subsequent judgment may redeem the premises from an execution sale by paying the proper amount to the clerk of court, without producing certified copies of the judgment docket, files and records.—Hunter v. Mauseau, Minn., 97 N. W. Rep. 651.

103. EXCEUTORS AND ADMINISTRATORS—Expenses Allowed.—A special administrator is not entitled on his final settlement to an allowance for the amount expended by him in procuring a revenue stamp for his bond.—*In re* Ford's Estate, Mont., 74 Pac. Rep. 735.

104. EXECUTORS AND ADMINISTRATORS — Motion to Amend Judgment.—Contract creditor of decedent held entitled to file motion to amend judgment, on foreclosure and sale of decedent's property, relating to surplus money, though not party to such action.—Powell v. Harrison, 85 N. Y. Supp. 452.

105. FEDERAL COURTS—Contempt and Habeas Corpus Proceedings.—Where a federal district court had jurisdiction to punish relator for contempt, such proceeding could not be reviewed by the circuit court on *habeas corpus*.—*Ex parte* O'Neal, U. S. C. C., N. D. Fla., 125 Fed. Rep. 967.

106. FRAUDS, STATUTE OF — Part Performance.—Receipt and retention of lands by a son from his father, in consideration of a relinquishment of any interest in the lands of the father, not in writing and signed by the son, is not such a part performance as to take agreement out of the statute of frauds.—Riddell v. Riddell, Neb., 97 N. W. Rep. 609.

107. FRAUDS, STATUTE OF—Promise to Perform Another's Contract.—Promise to perform a contract for another is within statute of frauds, and cannot be enforced by other party to original contract.—Stowell v. Gram, Mass., 69 N. E. Rep. 342.

108. GARNISHMENT—Security for Debts.—Bank, having security for loan, was not required to release same at instance of creditor of its debtor, and could not be garnished until its claim was paid.—Gregg v. First Nat. Bank, Mich., 97 N. W. Rep. 713.

109. GUARDIAN AND WARD—Action Against Executor. —Code 1880, § 2095, held not to authorize appointment of testatrix's husband as a testamentary guardian of testatrix's children.—Edwards v. Kelly, Miss., 35 So. Rep. 418

110. GUARDIAN AND WARD—Right of Action.—A guardian, accepting a mortgage, through false representations, in exchange for lands the legal title to which was in the name of her ward, cannot sue in her own name for the deceit.—Brock v. Rogers, Mass., 69 N. E. Rep. 334.

111. HOMESTEAD—Renting Out Portion — Owner of homestead may rent out a portion without subjecting it to the payment of his debts.—Bailey v. D. R. Dunlap Mercantile Co., Ala., 35 So. Rep. 451.

112. HUSBAND AND WIFE—Separate Maintenance.—A wife who is living apart from her husband for legal cause, may maintain, independent of an action for divorce, an equitable action for her separate support.—Baier v. Baier, Minn., 97 N. W. Rep. 671.

113. INSOLVENCY—Puffing by Creditors.—Where acts of creditors at an assignee's auction sale in puffing the price were not known to the assignee, the purchaser was not entitled to have the sale vacated by reason thereof.—Rowley v. D'Arcy, Mass., 69 N E. Rep. 325.

114. INTOXICATING LIQUORS — Proximate Cause of Death.—Sale of intoxicating liquors to one while intoxicated held the proximate cause of his death from pneumonia.— Nelson v. State, Ind., 69 N. E. Rep. 298.

115. LANDLORD AND TENANT—Lease of Timber Land.— A bare lease vests no estate in the lessee until he has actually entered and accepted the grant.—Bunch v. Elizabeth City Lumber Co , N. Car., 46 S. E. Rep. 24.

116. LANDLORD AND TENANT—Obstructing Entrance to Place of Business —A tenant held entitled to recover damages occasioned by a railroad company wrongfully obstructing the entrance to his place of business.—International & G. N. R. Co. v. Capers, Tex , 77 S. W. Rep. 39.

117. LANDLORD AND TENANT—Rent Secured by Lien on Crops.—A landlord has a lien on all agricultural products raised on the premises to secure his rent and supplies for the current year.—Ball, Brown & Co. v. Sledge, Miss., 35 So. Rep. 447.

118. LANDLORD AND TENANT—Unlawful Detainer.—A grantee of land in possession of a lessee held entitled to maintain an action against the lessee for unlawful detainer, though he conveyed the land to others.—Tucker v. McClenny, Mo., 77 S. W. Rep. 151.

119. LIBEL AND SLANDER Proprietor of Newspaper.— Proprietor of newspaper, leaving general manager in charge, who publishes a libel, refuses to retract, and republishes the same, held liable in punitive damages. —Crane v. Bennett, N. Y., 69 N. E. Rep. 274.

120. LIFE INSURANCE—Reinstatement of Policy After Lapse.—Beneficiary of life insurance policy held entitled to decree reinstating it on the books of the insurer after its termination for nonreceipt of premium in time required by the policy.—Travelers' Ins. Co. v. Brown, Ala., 35 So. Rep. 463.

121. MASTER AND SERVANT—Coupling Cars.—It is not negligence *per se* for a brakeman to go between a car and the engine to make a coupling.—Kansas City, M. & B. R. Co. v. Flippo, Ala., 35 So. Rep. 457.

122. MASTER AND SERVANT—Failure to Read Contract. —The mere fact that a person fails to read a contract, which he signs, affords no ground for his avoidance of the same, in the absence of any evidence of fraud or misrepresentation.—New York Cent. & H. R. R. Co. v. Difendaffer, U. S. C. C. of App., Seventh Circuit, 125 Fed. Rep. 893.

123. MECHANICS' LIENS—Application of Contractor's Payments.—Separate owners of buildings held not entitled to complain of subcontractor's application of payments made by contractor, and thereby invalidate liens. —Smith v. Wilcox, Oreg., 74 Pac. Rep. 708.

124. MORTGAGES — Personal Liability.—Where the maker of a mortgage note executed it on representations of the payee's agent that she was assuming no personal liability, the payee is not entitled, after foreclosure, to enforce the note against the maker personally.— Merchants' & Farmers' Bank v. Cleland, Ky., 77 S. W. Rep. 176.

125. MUNICIPAL CORPORATIONS—Impairment of Vested Rights —A right to revoke permission to use the streets of a city for laying electric wire conduits, reserved by ordinances and permits, may be exercised by the legislature.—Boston Electric Light Co. v. Boston Terminal Co., Mass., 69 N. E. Rep. 346.

126. NEGLIGENCE—Injury to Gas Main.—Death of person entering manhole two blocks from leak in gas main held not proximately occasioned by negligence of city two months before, occasioning breakage of main.— Murphy v. City of New York, 85 N. Y. Supp. 445.

127. NEWSPAPERS—Award of City Printing.—Under Seattle City Charter, § 31, the fact that a newspaper, designated as "city official newspaper" gave special prominence to legal news, held not to preclude its being one of general circulation.—Puget Sound Pub. Co. v. Times Printing Co., Wash , 74 Pac. Rep. 802.

128. NEW TRIAL—Misjoinder of Parties. — Where defendants' excluded testimony bore upon their liability to only two of several plaintiffs, defendants' motion that an adverse verdict be set aside as to all the plaintiffs on that account is properly overruled.—Board of Com'rs of Clay County v. Redifer, Ind., 69 N. E. Rep. 305.

129. NOVATION—Essentials Must be Shown.—To establish novation, discharge of original parties from liability to each other, and substitution of reciprocal obligations between substituted parties, must be shown.— Stowell v. Gram, Mass., 69 N. E. Rep. 342.

130. PARTNERSHIP—Accounting Where Books are Confused.—Accounting could be had between partners, though books were confused, where defendant was responsible for conditions —Rowan v. Lamb, Miss., 35 So. Rep. 427.

131. PARTNERSHIP—Firm Note.—Money borrowed on a firm note, and used in the firm business, cannot be charged against a partner in the accounting.—Rowan v. Lamb, Miss., 35 So. Rep. 427.

132. PARTNERSHIP — Renewal Note. — The managing member of a firm held to have authority to execute a renewal of note, on which the firm are liable as indorsers.—Citizens' Commercial & Savings Bank v. Platt, Mich., 97 N. W. Rep. 694.

133. PILOTS—Qualifications.—Pilots in Delaware Bay and river are required to exercise the care and skill of river pilots, and are chargeable with knowledge of natural objects on shore and the signification and position of fixed lights.—Harrison v. Hughes, U. S. C. C. of App , Third Circuit, 125 Fed. Rep. 860.

134. PRINCIPAL AND AGENT — Knowledge of Fraud. — Person having knowledge of fraudulent representations to induce a surety to sign a note held not an agent of

the payee.—Hardin & Richm v. Chenault, Ky., 77 S. W. Rep. 192.

135. PRINCIPAL AND SURETY — Notice of Default.—A covenant to notify a surety of the default of his principal "immediately" is not performed by mailing a notice in 11 days after the known default. — National Surety Co. v. Long, U. S. C. C. of App., Eighth Circuit, 125 Fed. Rep. 887.

136. PROCESS—Publication of Summons.—Affidavit for publication of summons, void on its face for failing to state the venue, cannot be cured by resorting to extrinsic evidence, when the decree rendered thereon is assailed.—Albers v. Kozeluh, Neb., 97 N. W. Rep. 646.

137. PROHIBITION — Jurisdiction of Inferior Court.—That a superior court is without jurisdiction, and a trial would be expensive and troublesome, is not sufficient ground for prohibiting the court from proceeding to trial.—Lindley v. Superior Court of Siskiyou County, Cal., 74 Pac. Rep. 765

138. PUBLIC LANDS — Swamp Lands.—A purchaser of swamp land from the state held chargeable by recital in his deed with notice of the pendency of proceedings for confirmation before the secretary of the interior.—Williamson & Bro. v. Baugh, Ark., 76 S. W. Rep. 423.

139. RAILROADS—Injury to Trespasser.—Railroad company held not liable for negligently occasioning death of trespasser run over in its yards. — Kendall v. Louisville & N. R. Co., Ky., 76 S. W. Rep. 376.

140. RAILROADS—Killing Trespasser on Tracks. — The mere occasional passage of unauthorized pedestrians on a railroad track with the knowledge of the company held not sufficient to convert a trespasser there to a licensee.—Goodman's Adm'r v. Louisville & N. R. Co., Ky., 77 S. W. Rep. 174.

141. REFERENCE—Questions not Raised Before Commissioners.—Where a question is not raised on a trial before commissioners acting as referees, it cannot be taken advantage of as a ground to have the case recommitted.—Selectmen of Town of Danvers v. Commonwealth, Mass., 69 N. E. Rep. 320.

142. RELEASE—Landlord's Lien on Crops —One who received cotton from his debtor, and gave a receipt, but was forced to pay such proceeds to one holding a landlord's lien on the cotton, might enforce repayment from his debtor.—Ball, Brown & Co. v. Sledge, Miss., 35 So. Rep. 447.

143. REPLEVIN—Costs. —Under Code 1892, § 3729, a surety on a replevin redelivery bond held liable for costs, though the bond in the form prescribed by section 3716 is silent as to costs.—Sparks v. Hopsen, Miss., 35 So. Rep. 446.

144. REPLEVIN—Evidence.—In replevin, on an issue as to the ownership of personalty, evidence that no taxes were assessed against a person claiming the property was properly admitted.—Kastl v. Arthur, Mich., 97 N. W. Rep. 711.

145. SHERIFFS AND CONSTABLES—Not Insurer of Property in Custody.—A sheriff, in custody of property, is not an insurer, but is bound to use that degree of care which a man of ordinary discretion might use with his own property.—Standard Wine Co. v. Chipman, Mich., 97 N. W. Rep. 679.

146. TAXATION—Erroneous Recitals in Tax Deed.—A tax deed, reciting that the sale was made for the taxes of the year in which the sale occurred, is void on its face.—Bower v. Chess & Wymand Co., Miss., 35 So. Rep. 444.

147. TAXATION—Foreclosure in Tax Lien —The decree in an action by a county to foreclose a tax lien should not include taxes for which no sale has been made or certificate issued —Keith County v. Big Springs Land & Cattle Co., Neb., 97 N. W. Rep. 626

148. TRADEMARKS AND TRADENAMES — Infringements.—A cause of action for infringement of trademarks and labels held properly joined in equity with a suit for unlawful competition arising out of the same cause.—Jewish Colonization Ass'n v. Solomon & Germanski, U. S. C. C., S. D. N. Y., 125 Fed. Rep. 994.

149. TRESPASS—Removal of House.—A person, claiming damages for a trespass on a lot and for a removal therefrom of a house, could not recover for a trespass against her possession of so much of the house as was located on the adjoining land owned by defendant.—Jones v. Kennedy, Ala., 35 So. Rep. 455.

150. TROVER AND CONVERSION—What may be Shown under General Denial.—Under a general denial, a defendant in an action for conversion may prove title in a third person.—Simar v. Shea, 85 N. Y. Supp. 457.

151. TURNPIKES AND TOLL ROADS—Portion Within City Limits.—Where a portion of a turnpike is included in city limits, it is not the duty of the city to keep that portion in repair.—Columbia & Cedar Creek Turnpike Co. v. Vivion, Mo., 77 S.W. Rep. 89.

152. USURY—Action on Note.—Though a note carries on its face interest at 10 per cent., such fact will not render void, as usurious, an assignment of the bond for title as collateral for the payment of the note, under Civ. Code 1895, § 2892.—Elder v. Elder, Ga., 45 S. E. Rep. 990.

153. USURY—Action on Note.—Controversy concerning usury paid on note held by national bank, secured by collateral, arising in suit to foreclose mortgage, held governed by federal laws, though the mortgage securing note was executed in favor of bank president.—Schuyler Nat. Bank v. Gadsden, U. S. S. C., 24 Sup. Ct. Rep. 129.

154. USURY—Agreement to Make Consignment.—Stipulation in a note to consign cotton to a commission merchant held not to make it usurious —Kitchen & Bro v. Robinson Bro., Ala , 35 So. Rep. 461.

155. VENDOR AND PURCHASER—Stipulation in Deed.—Failure to include a personal provision in a contract for the sale of land in the deed held not a breach of the contract.—Reitz v. Lotz's Adm'r, Mo., 77 S. W. Rep. 145.

156. WILLS—Limitations Against Legatee.—Limitations held not to run against a legatee until amount of her distributive share had been determined by final accounting.—Edwards v. Kelly, Miss., 35 So. Rep. 418.

157. WITNESSES—Admissions.—Admissions of defendant, put in evidence by plaintiff, held not incompetent because the latter subsequently elicits facts from the defendant contradicting the admissions —Vollkommer v. Cody, N. Y., 69 N. E. Rep. 277.

158. WITNESSES — Contradictory Prior Statement — Under Code Civ. Proc. § 2052, a witness, confronted on cross-examination by a prior statement contradictory to the testimony given, held entitled to testify, on redirect examination, that the prior statement is untrue.—People v. Glover, Cal , 74 Pac. Rep. 745.

159. WITNESSES—Cross Examination.—It is competent, on cross-examination, to inquire of a witness if he has had any conversation with any one as to the facts to which he has testified.—Ontario-Colorado Gold Min. Co. v. MacKenzie, Colo., 74 Pac. Rep. 791.

160. WITNESSES—Impeachment.—In a suit to recover a board bill, held proper, for the purpose of impeachment, to ask a witness whether he had not made statements admitting the partnership.—Weeks v. Hutchinson, Mich., 97 N. W. Rep. 695.

161. WITNESSES—Right to Compel Corporation to Produce one of its Officers.—A court is without power to compel a corporation to produce one of its officers, who is beyond the jurisdiction of the court, as a witness; the corporation itself having no power, and being under no legal duty, to compel the officer's attendance.—Central Grain & Stock Exch. of Hammond v. Board of Trade of City of Chicago, U. S. C. C. of App., Seventh Circuit, 125 Fed. Rep. 463.

162. WITNESSES—Transactions With Deceased.—In action by administratrix to recover money loaned by decedent, refusal to permit defendant's counsel to examine him as to the transaction held error.—Lange v. Klatt, Mich., 97 N. W. Rep. 708.